

HALIFAX FISHERY COMMISSION.

CLOSING ARGUMENT OF MR. DOUTRE,

ON BEHALF OF HER BRITANNIC MAJESTY.

FRIDAY, NOV. 16, 1877.

The Conference met.

MR. DOUTRE addressed the Commission as follows :

With the permission of your Excellency and your Honors, I will lay before this Tribunal, in support of Her Majesty's claim, some observations, which I will make as brief as the nature of the case admits, and in order that these remarks may be intelligible, without reference to many voluminous documents, I solicit your indulgence while going once more over grounds familiar to the Commission.

As soon as the war, resulting in the independence of the confederated colonies, came to an end, the United States sought for a recognition of their new existence from Great Britain and the Treaty of Paris of 1783 was agreed to. As an incident to the main object of that Treaty, Art. 3 states: "The people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Bank and on all other banks of Newfoundland; also in the Gulf of St. Lawrence, and at all other places in the sea, where the inhabitants of both countries used at any time heretofore to fish; and also the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use (but not to dry or cure the same on that island), and also on the coast, bays and creeks of all other of His Britannic Majesty's Dominions in America; and the American fishermen shall have the liberty to dry and cure fish in any of the unsettled bays, harbors and creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same, or either of them, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such Settlement without a previous agreement for that purpose with the inhabitants, proprietors, or possessors of the ground."

We have heard from counsel representing the United States very extraordinary assumptions, both historical and political, concerning the circumstances under which this Treaty was adopted. At the distance of nearly a century, fancy can suggest much to literary or romantic speakers, especially when it concerns a subject on which they are not called upon to give any evidence,—on which they can build an interesting record of their own opinions, before this Commission. We had to deal with a very complex matter of business,—one which probably has never engaged the research of a judicial tribunal,—and we thought this was enough for the efforts of humble men of business, such as we claim to be. Our friends on the American side treated us with a poetical account of the capture of the Golden Fleece at Louisburg, by Massachusetts heroes, in order to show how their statesmen of a previous generation had misconceived the nature of their primitive, conquered and indisputable right to our fisheries, without indemnity in any shape. British historians, statesmen or orators would probably have little weight with our friends in their estimate of Treaty negotiations. With the hope of obtaining a hearing from our opponents let us speak through the mouth of American diplomatists or statesmen.

It will strike every one that in the concessions contained in our Treaty of 1783, Great Britain did not extend to American fishermen all the rights belonging to her own subjects in these fisheries,—a fact sufficient in itself to preserve to Great Britain her sovereignty in that part of her dominions.

When the war of 1812 was brought to an end, the United States had not lived long enough, as an independent nation, to create that pleiad of eminent jurists, publicists and Secretaries of State, who have since brought them up to the standard of the oldest constituted States of Europe. The characteristic elation of the nation who had but recently conquered their national existence, marked the conduct of the United States government during the negotiations of the Treaty of Ghent in 1814. They persistently refused to recognize a rule of international law, which no one would now dispute, and which was, however, fully admitted by some of the United States representatives at Ghent, that war abrogates all treaties between belligerents.

Henry Clay, one of those representatives, at Ghent, answered in the following manner, the proposition of the British Plenipotentiaries, who desired to include the Fisheries in that Treaty as appears in the Duplicate Letters: The Fisheries and the Mississippi. By J. Q. Adams. P. 14 *in fine*—

"In answer to the declaration made by the British Plenipotentiaries respecting the fisheries, the undersigned (U. S. Representatives) referring to what passed in the Conference of the 9th of August, can only state that they are not authorized to bring into discussion any of the rights or liberties which the United States have heretofore enjoyed in relation thereto. From their nature and from the peculiar character of the Treaty of 1783, by which they were recognized, no further stipulation has been deemed necessary by the government of the United States, to entitle them to the full enjoyment of all of them."

In order to fully understand the views entertained by the British and American plenipotentiaries, a few extracts from the correspondence between American diplomatists, published from 1814 to 1822, and contained in the book of Mr. Adams, will show the course adopted at Ghent, by himself and his colleagues.

(Extract from Protocol of Conference held 1st Dec., 1814, at Ghent, p. 45.)

"The American plenipotentiaries also proposed the following amendment to Article 8th, viz.: 'The inhabitants of the United States shall continue to enjoy the liberty to take, dry, and cure fish, in places within the exclusive jurisdiction of Great Britain, as secured by the former treaty of peace; and the navigation of the river Mississippi, within the exclusive jurisdiction of the United States, shall remain free and open to the subjects of Great Britain, in the manner secured by the said treaty.'"

"I know not, indeed, any treaty, nor any article of a treaty, whatever may have been the subject to which it related, of the terms in which it was expressed, that has survived a war between the parties, without being specially renewed, by reference or recital in the succeeding treaty of peace. I cannot, indeed, conceive the possibility of such a treaty, or of such an article; for, however clear and strong the stipulations for perpetuity might be, these stipulations themselves would follow the fate of ordinary unexecuted engagements, and require, after a war, the declared assent of the parties for their revival."

(Idem, p. 75.)

"I have in this view of the subject been led to conclude that the treaty of 1783, in relation to the fishing liberty, is abrogated by the war, and that this liberty is totally destitute of support from prescription, and, consequently, that we are left without any title to it whatsoever."

(Idem p. 77.)

"Considering, therefore, the fishing liberty to be entirely at an end, without a new stipulation for its revival; and believing that we are entirely free to discuss the terms and conditions of such a stipulation, I did not object to the article proposed by us, because any article on the subject was unnecessary, or contrary to our instructions, but I objected specially to that article, because, by conceding in it, to Great Britain, the free navigation of the Mississippi, we not only directly violated our instructions, but we offered, in my estimation, a price much above its value, and which could not justly be given."

(Idem p. 87.)

"I have always been willing to make any sacrifice for the fishing privilege, which its nature, or comparative importance would justify, but I conscientiously believe that the free navigation of the Mississippi, and the access to it which we expressly offered, were pregnant with too much mischief to be offered, directly, under our construction of the treaty; or, indirectly, as they were in fact offered, as a new equivalent for the liberty of taking and drying fish within British jurisdiction."

Mr. Russell was supported by Henry Clay in these views.

Our learned friend, Mr. Dana, mentioned the circumstances under which England was carrying on the negotiations at Ghent. She was engaged in a continental war, with the most illustrious warrior of modern times, and the Americans were more or less exacting according to her embarrassments. We have this described at p. 233 of Mr. J. Q. Adams' Correspondence, as follows:

"Subsequently, however, the overthrow of Napoleon having left us to contend single-handed with the undivided power of Great Britain, our government thought proper to change the terms offered to the British Government, and accordingly sent additional instructions to Ghent, directing our commissioners to make a peace if practicable, upon the simple condition, that each party should be placed in the same situation in which the war found them.

"At the commencement of the war, the British had a right, by treaty, not only to navigate the Mississippi, but to trade with all our Western Indians. Of course our commissioners were instructed to consent to the continuance of this right, if no better terms could be procured. Under these instructions a proposition relative to the Mississippi and the fisheries, similar to that which had been rejected, was again presented, adopted, and sent to the British commissioners. But it did not restore the right to navigate the Mississippi in as full a manner as the British Government desired, and on that account, we presume, was rejected."

The following dates will explain the meaning of the paragraph referring to Napoleon. The mission to Ghent had met before the disasters to French arms which resulted in the abdication of Napoleon on the 4th of April, 1814. Napoleon was conveyed to Elba in May following. With the slow communications of the time, the Americans learned only in June of the victories of England, which seem to have given a certain tone of firmness to her negotiations at Ghent. The treaty was signed on the 24th Dec., 1814. On the 1st March, 1815, Napoleon escaped from Elba and landed at Fréjus. Americans regretted having precipitated their negotiations, and not being in a position to avail themselves of the renewal of war on the Continent to insist on better terms, many expressed their grief in unmeasured tones; but it was too late.

Each of the contracting parties persisting in their views, the subject of the fisheries was excluded from the Treaty of Ghent; but the United States soon learned that England was right, and they had to resort to the *ultima ratio* of another war to enforce their opinions, not only against Great Britain, but also against the universal sense of other nations. We read in the same book p. 240, that in the summer of 1815, British armed cruisers warned off all American fishing vessels on the Coast of Nova Scotia, to a distance of sixty miles from the shores, and thereby says our writer, the British Government proved significantly what they had meant by their side of the argument. On this, the Americans solicited and obtained the Convention of 1818. The first article of that treaty explains the circumstances under which it was come to:

"Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry, and cure fish on certain coasts, bays, harbours and creeks of His Britannic Majesty's dominions in America, it is agreed, between the High Contracting Parties, that the inhabitants of the said United States shall have, forever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland, which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shore, of Magdalen Islands, and also on the coasts, bays, harbours, and creeks, from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belle Isles, and hence northwardly indefinitely along the coast, without prejudice however to any of the exclusive rights of the Hudson Bay Company; and that the American fishermen shall also have liberty, forever, to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern coast of Newfoundland; here above described, and of the coast of Labrador; but so soon as the same or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounce forever, any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbours, of His Britannic Majesty's dominions in America not included within the above mentioned limits. Provided, however, that the American fishermen shall be admitted to enter such bays or harbours, for the purpose of shelter, and of repairing damages therein, of purchasing wood and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as shall be necessary to prevent their taking, drying or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

The difference between this Convention and the Treaty of 1783 consists in the exclusion of the Americans from the shore and bay fisheries which they enjoyed under the Treaty of 1783. This was more than sufficient to mark the abandonment by the Americans of the position assumed at Ghent, that war had not abrogated their fishing liberties under that treaty. It is, in fact, owing to that important difference that I have at this moment the honor of addressing myself to this distinguished tribunal.

Six years after the adoption of this Convention, in 1824, differences grew out of the three miles limit, though it does not appear to have arisen from the headland question, or fishing in bays.

Mr. Brent (as quoted at p. 8 of U. S. Brief) speaks of American citizens who have been interrupted "during the present season, in their accustomed and lawful employment of taking and curing fish in the Bay of Fundy and upon the Grand Banks, by the British armed brig 'Dotterel,' &c.

Mr. Addington answers (p. 8 and 9 of U. S. Brief), that the complainants are not entitled to reparation for

the loss they have sustained, having rendered themselves obnoxious, having been taken, some *flagrante delicto*, and others under such circumstances that they could have no other intention than that of pursuing their avocations as fishermen, within the lines laid down by treaty as forming boundaries within which pursuit was interdicted to them.

The United States Brief which is now confessed to have been inspired by a misapprehension of the facts, states (p. 9) that the claim to exclude the American fishermen from the great bays, such as Fundy and Chaleurs, and also from a distance of three miles, determined by a line drawn from headland to headland across their mouths, was not attempted to be enforced until the years 1838 and 1839, when several of the American fishing vessels were seized by the British Cruisers for fishing in the large bays.

This admission coupled with the complaint of 1824, makes it evident that indisputable portions of the Convention had been violated, since American vessels had been seized in Two-Islands Harbor, Grand Manan. This was, even with the present American interpretation of the Convention of 1818, as to headlands, an evident trespass on prohibited grounds; and the rescue of the vessels seized by the fishermen of Eastport, and other similar instances, should not be mentioned otherwise than as acts of piracy, which a powerful nation may disregard for peace sake, but will resent when treasured injury explodes on other occasions.

It has been the policy of certain American Statesmen to lay the blame of most of their fisheries difficulties on the shoulders of colonists, in order to obtain their easy settlement, at the hands of a distant, and *(quoad lacrum)* disinterested, Imperial and supreme power. From a natural connection between causes and effects, our maritime provinces most in proximity to the United States, had to bear the brunt of a triangular duel, the chief part of which fell to Nova Scotia, who showed herself equal to the occasion. It can be shown that what was styled as almost barbarian legislation, on the part of the Nova Scotia Parliament, exists at this very hour, in the Legislation of the United States. And it is not a reproach that I am casting here against the United States. They have done like other nations, who made effectual provisions, against the violators of their customs, trade or navigation laws, and they could not do less or otherwise than the legislature of Nova Scotia.

The Customs Statute of the Dominion, 31 V. c. 6, (1867) contains similar provisions to those of the Fishing Act of the same Session, ch. 61, ss. 10, 12, 15, and lays upon the owner and claimant of goods seized by Customs officers, the burden of proving the illegality of the seizure; it obliges the claimant of any vessel, goods or things seized, in pursuance of any law relating to the customs, or to trade or navigation, to give security to answer for costs. Other parts provide for all the things contained in the Nova Scotia Statute, so much unadverted upon, as being contrary to common law principles, but which are applicable to British subjects as well as to foreigners. The Imperial Act, 3 & 4 Will. 4 c. 59 ss. 67, 69, 70, 71, consolidated former Acts, dating as far back as when the 13 revolted Colonies were part of the Empire, contains similar provisions as our Dominion Acts concerning Customs and Fisheries, and as the Nova Scotia Statute of 1836. I had intended to cite some words of the American law on the subject, but the volume is not at hand. I supplement the omission by—1. Gallison, p. 191; 2. Gallison, p. 505; 3. Greenleaf, Sect 404, and note 2, p. 360; 5. Wheaton, Sect. 407, p. 461. and Sect. 411, p. 463.

MR. DANA:—Mr. DOUTRE, do you not consider that to the same effect as if the Judge says that the Government must make out a *prima facie* case.

MR. DOUTRE:—I have only read a small portion of the decision; but the seizure constitutes a *prima facie* case.

MR. DANA:—Oh, no.

MR. DOUTRE:—Seizure was made for open violation of the law, and it is for the claimant to show that he did not violate the law.

MR. DANA:—The Decision is that the Government must make out a *prima facie* case.

MR. DOUTRE:—It is impossible for me to satisfy your mind on that point; the report is very long, and if you read it you will be convinced that I am right.

MR. DANA:—It says the Government are obliged by statute to prove a *prima facie* case.

MR. DOUTRE:—These cases are all of a similar character. I admit that the ordinary rules of evidence are here reversed. The reason is that the maintenance of the ordinary rules, concerning evidence, would work great mischief, if applied to such matters as these.

MR. FOSTER:—This is a judgment based on suspicion, in the opinion of the Court, and not on the opinion of the boarding officer.

MR. DOUTRE:—The boarding officer makes the seizure, and reports that he has made it, and unless the defendant comes and shows that the seizure has been illegally made; the Court ratifies the seizure, and condemns the goods or ships seized.

MR. DANA:—Are you speaking of war, now?

MR. DOUTRE:—No, of profound peace.

MR. DANA:—This was in time of war, and in the very case you cite, it is said that the acts must be established by the Government which has to make out a *prima facie* case.

MR. DOUTRE:—I will take the law of the United States on this point as establishing my view. I will now give the reasons why such legislation has been adopted in England, in the United States and in Canada, in an extract taken from a judgment rendered by the distinguished Chief Justice of Nova Scotia, Sir William Young, in Dec. 1870, in *re Schooner Minnie*, Court of Vice Admiralty:—

"It must be recollected that Custom House Laws are framed to defeat the infinitely varied, unscrupulous and ingenious devices to defraud the revenue of the country. In no other system is the party accused obliged to prove his innocence—the weight of proof is on him, reversing one of the first principles of criminal law. Why have the Legislatures of Great Britain, of the United States, and of the Dominion alike, sanctioned this departure from the more humane, and, as it would seem at the first blush, the more reasonable rule? From a necessity, demonstrated by experience—the necessity of protecting the fair trader and counter-working and punishing the smuggler."

MR. DANA:—That is a British decision which you have read?

MR. DOUTRE:—Yes; a British Colonial one.

The provisions of the Nova Scotia Statute were intended to apply to a class of cases belonging to something similar to customs regulations, and are inseparable from them, and if ever our American friends desire to enforce on their coasts the three miles limit, which their answer and brief recognize as resting on the unwritten law of nations, they will have to extend to this matter their customs law above cited, as did the Legislature of Nova Scotia.

The learned Agent of the United States went very far from any disputed point to gain sympathy, by a reference to what, in the United States Answer to the case, is called an inhospitable statute. He says:—

"A Nova Scotia statute of 1836, after providing for the forfeiture of the vessel found fishing, or preparing to fish, or to have been fishing within three miles of the coast, bays, creeks or harbors, and providing that the master, or person in command, should not truly answer the questions put to him in such examination by the boarding officer, he should forfeit the sum of one hundred pounds, goes on to provide that if any goods shipped on the vessel were seized for any cause of forfeiture under this Act, and any dispute arises whether they have been lawfully seized, the proof touching the illegality of the seizure shall be on the owner or claimant of the goods, ship, or vessel, but not on the officer or person who shall seize and stop the same."

These are the very expressions which the learned Agent for the United States employed when he unadvertedly

on that Statute. He also states that he is not aware whether a Statute similar to this one, which existed in Nova Scotia in 1868, has been repealed. In 1867, however, Nova Scotia, New Brunswick and the two Canadas were confederated together, and the matters relating to the fisheries and customs were then transferred to the Dominion of Canada, which has ever since exercised the sole power of legislation over those subjects. The best answer that can be given to Mr. Foster and his colleagues on this point may be quoted from high authority. The Agent for the United States, about the period of his arrival here to attend to his duties before this Commission, published in the "American Law Review," a journal which speaks with quasi-judicial authority in Massachusetts, published in the *Franconia*, having a prominent bearing on this case now before the Commission, I only mention this fact in order to show the high character of the *Review*. This journal, alarmed at the views proclaimed by President Grant, published a very able article on the subject, the writer being an eminent and able lawyer; and this article deals with the question of preparing to fish, as well as with the question of trade, both of which have been discussed by my learned friend the Agent for the United States. In dealing with the claim of the right, on the part of American fishermen, to lie at anchor, clean and pack fish and purchase bait, prepare to fish and trans-ship cargoes, the writer says:

Mr. DANA:—Will you have the kindness to state by whom these views are set forth?

Mr. DOUTRE:—I am not quite sure of the name.

Mr. DANA: It is not Mr. Foster.

Mr. DOUTRE: No.

Mr. DANA: You do not know the author.

Mr. DOUTRE: I think I do.

Mr. FOSTER: Unless that is Prof. Pomeroy's argument, it is something I have never before heard of.

Mr. DOUTRE: It is his argument, I am informed.

Mr. DANA: I wish also to say that this *Review* has no quasi-judicial authority. It is private property, and edited by private persons.

Mr. DOUTRE: I thus consider all publications of this nature.

"All these acts are plainly unlawful, and would be good grounds for the confiscation of the offending vessel, or the infliction of pecuniary penalties. The treaty stipulates that 'American fishermen shall be admitted to enter such bays and harbors for the purpose of shelter, of repairing damages therein, of purchasing wood, and for no other purpose whatever.' Even assuming, as has sometimes been urged, that the words 'for no other purpose whatever' refer exclusively to matters connected with the business and process of fishing, the prohibition still covers all the acts enumerated. To use the bays and harbors as places of convenience in which to clean and pack fish, to procure bait, to prepare to fish, or to land cargoes of fish, would be an invasion of the exclusive fishing rights within the territorial waters secured to British subjects and denied to American citizens. 'Preparing to fish,' if permitted, would render it almost impossible to prevent actual fishing. When, from considerations of policy, statutes are made to tend up to it, and facilitate its accomplishment. Thus, if Congress should absolutely prohibit the landing of certain goods in our ports, the United States Government would doubtless listen with amazement to a complaint from foreign importers that 'preparing and curing fish' was also prohibited. All customs and revenue regulations are framed upon this theory. The provision of the Imperial and Canadian statutes making it a penal offence for American vessels 'to prepare to fish' while lying in territorial waters, seems, therefore, to be a 'restriction necessary to prevent' their taking fish therein, and for that reason to be lawful and proper."

The claim of right to sell goods and buy supplies, the traffic in which the Nova Scotia Act was intended to prevent, is thus commented on:—

"This particular claim has not yet been made the subject of diplomatic correspondence between the two governments, but amongst the documents laid before Congress at its present session is a consular letter from which we quote:—

"It (the Treaty of 1818) made no reference to and did not attempt to regulate the deep sea fisheries which were open to all the as are in convention to the treaty, namely: to purposes connected with the taking, drying, or curing fish within three marine miles of certain coasts, and not in any manner to supplies intended for the ocean fisheries, with which the treaty had no connection.

"All this is clearly a mistake, and if the claims of American fishermen, partially sanctioned by the United States executive, rest upon no better foundation they must be abandoned. In fact, the stipulation of the treaty in which the clause occurs, has reference alone to vessels employed in deep sea fishing. It did not require any grant to enable our citizens to engage in their occupation outside the territorial limits, that is upon the open sea; but they were forbidden to take, dry, or cure fish in the bays and harbors. They were permitted, however, to come into those inshore waters for shelter, repairs, wood and fuel, and for no other purpose whatever." To what American vessels is this privilege given? Plainly to those that fish in the open sea. To say that the clause which acts are in terms expressly prohibited, is simply absurd. It would be much more reasonable to say that, applying the maxim *nos contra actum*, the words "for no other purpose whatever" are to be construed as having reference solely to matters connected with regular fishing voyages, necessary, convenient or customary in the business of fishing, and are not to be extended to other acts of an entirely different and purely commercial nature.

"President Grant declares that so far as the Canadian claim is founded upon an alleged construction of the convention of 1818, it cannot be acquiesced in by the United States. He states that during the conference which preceded the signing of this treaty, the British Commissioners proposed a clause expressly prohibiting American fishermen from carrying on any trade with British subjects, and from having on board goods except such as might be necessary for the prosecution of their voyages. He adds:—

"This proposition which is identical with the construction now put upon the language of the convention, was emphatically rejected by the American Commissioners, and thereupon was abandoned by the British plenipotentiaries, and Article I, as it stands in the convention was substituted."

"The President has been misinformed. The proposition alluded to had no connection with the privilege given in the latter part of Article I to enter bays and harbors for shelter and other similar purposes; but referred expressly and exclusively to the grant contained in the former part of the Article of a right to take, dry and cure fish on the coasts and in the bays of Labrador and Newfoundland. This is apparent from a reference to the negotiations themselves. On September 17, 1818, the American Commissioners submitted their first *project* of a treaty. The proposed article relating to the fisheries was nearly the same as the one finally adopted, including a renunciation of the liberty to fish within three miles of other coasts and bays. The proviso was as follows:—

"Provided however that American fishermen shall be permitted to enter such bays and harbors for the purpose only of obtaining shelter, wood, water and bait."

"The British counter *project* granted a liberty to take, dry, and cure fish on the coasts of Newfoundland and Labrador within much narrower limits than those demanded by the American plenipotentiaries. It admitted the fishing vessels of the United States into other bays and harbors, 'for the purpose of shelter, of repairing damages therein, of purchasing wood, and obtaining water, and for no other purpose.' It also contained the following clause:

"It is further understood that the liberty of taking, drying and curing fish granted in the preceding part of this article shall not be construed to extend the privilege of carrying on trade with any of his Britannic Majesty's subjects residing within the limits heretofore assigned to the use of fishermen of the United States. And in order the more effectually to guard against smuggling, it shall be lawful for the vessels of the United States engaged in the said fishery to have on board any goods, wares, and merchandise, except such as may be necessary for the prosecution of the fishery."

"Messrs. Gollatin and Rush, replying, insisting upon a privilege to take, dry, and cure fish on the coasts of Newfoundland and Labrador within the limits first demanded by them, and added as the last sentence of their letter: The clauses making vessels liable to confiscation in case any articles not wanted for carrying on the fishery should be found on board, would expose the fishermen to endless vexations. On the 13th October, the British Commissioners proposed Article I, as it now stands, which was accepted at once. There was no discussion of an alleged right of American fishermen to engage in trade, and no further allusion on the subject. Indeed, on Newfoundland, Labrador, and the Magdalen Islands for inshore fishing, and paid little attention to the privilege—as possible of small value, but now important—of using other bays and harbours for shelter and kindred purposes. The British agents on the other hand endeavoured to confine the former grant within narrow bounds, and to load it with restrictions. The rejected clause, concerning trade and carrying goods, was one of these restrictions, and in its very terms referred alone to the vessels taking, drying and

curing fish on the portion of the Newfoundland and Labrador coasts made free to our citizens. It should be noticed that the proviso finally adopted omitted the right originally demanded by the Americans of entering other bays and harbors for bait, and is identical with the one at first submitted by the British plenipotentiaries, strengthened by the addition of the word "whatever" after the clause "for no other purpose." It is evident, therefore, that the British Government is not estopped from opposing the claim now set up by American fishermen, and sustained by the President, and any thing that occurred during the negotiations preliminary to the treaty.

"We must fall back, then, upon the accepted doctrines of International Law. Every nation has the undoubted right to prescribe such regulations of commerce carried on its waters, and with its citizens, as it deems expedient, even to the extent of excluding entirely some or all foreign vessels and merchandise. Such measures may be harsh, and under some circumstances a violation of inter-state comity, but they are not illegal. At all events, it does not become a government to complain, which now maintains a tariff prohibitory as to many articles, and which at one time passed a general embargo and non-intercourse Act. There seem to be special reasons why the Dominion authorities may inhibit general commerce by Americans engaged in fishing. Their vessels clear for no particular port; they are accustomed to enter one bay or harbor after another as their needs demand; they might thus carry, on a coasting trade, goods they would certainly have every opportunity for successful smuggling. Indeed, this would legitimately belong to the local customs and revenue system, and not to the fisheries. *We are thus forced to the conclusion that American fishermen have no right to enter the bays and harbors in question and sell goods or purchase supplies other than wood and water.*"

It is not necessary to add a word to the able and impartial language quoted, except to suggest that if the author had been now writing, he might have found a more forcible example of inhospitable legislation than the "general embargo and non-intercourse act," namely, the attempt to evade the plighted promise of the nation, to remove the taxation from fish, by taxing the cans,—useless for any other purpose,—in which the fish are sent to market.

While restoring to the legislation of Nova Scotia its true character, this article shows also which of the two decisions rendered, one by Mr. Justice Hazen, the other by the distinguished and learned Chief Justice, Sir William Young, must be held to be the correct one, on *preparing to fish*. The latter's judgment receives from this impartial source an authority which it did not require to carry conviction to all unprejudiced minds.

The necessity for the Nova Scotia Statute of 1833, so much complained of, became apparent within a pretty short period.

In 1835, as mentioned in the United States Brief, p. 9, several American vessels were seized by British cruisers, for fishing in large bays. Between the dates of the Nova Scotia Statute and these seizures, the American Secretary of State had issued circulars enjoining American fishermen to observe the limits of the treaty, but without saying what these limits were. Why did he abstain from giving his countrymen the text of the Convention of 1818, Article 1st? They could have read in it that the United States had renounced forever the liberty of taking, drying or curing fish within three marine miles of any coast, bay, creek or harbor, and that they could not be admitted to enter such bays or harbors, except for shelter, or repairing damages, or obtaining wood and water, and for no other purpose whatever. Every fisherman would have understood such clear language. Statesmen only could imagine that "bays" meant large bays, more than 6 miles wide at their entrance.

It was the privilege of eminent politicians, but not of the fishermen, to handle that extraordinary logic which involves the contention—1st, That for the purpose of fishing, the territorial waters of every country along the sea-coast extend 3 miles from low-water mark. 2nd, That "in the case of bays and gulfs, such only are territorial waters as do not exceed 6 miles in width at the mouth upon a straight line measured from headland to headland." 3rd, That "all larger bodies of water connected with the open sea, form a part of it." These words are taken from the Answer to British Case, pp. 2, 3. The framers of the Convention of 1818 must have meant those large bays, when they excluded American fishermen from entering into any bay, etc. The most that the fishermen could have said, after reading the text, would be that it must have been an oversight,—and he would never have thought of taking the law in his own hand and disregarding a solemn contract entered into by his Government. But, with his common sense, he would have said: The Convention could not mean the small bays, since I am told by American lawyers that it did not require a treaty to protect the small bays against our interference. (See the Answer to the Case at page 2.) The word bay could not mean anything but those large bays, which, in the absence of Treaty stipulations, might by some be considered as forming part of the open sea. And acting on this plain interpretation of the most clear terms, the fishermen would have abstained from entering into any bay except for the purposes mentioned in the Convention. Old fishermen would, in addition, have taught the younger ones that there was a paramount reason why the American framers of the Convention of 1818 could have no desire to open the large bays to their fishermen, for the reason that up to 1827 or 1828, that is until ten years after the Convention, Mackerel had not been found in large quantities in the Gulf of St. Lawrence.

If then the circulars of the Secretary of the Treasury, to American fishermen, failed to put the latter on their guard, when the Nova Scotia Legislature showed such firm determination to enforce the rights of her fishermen and coerce the American to obedience to law and treaties, the responsibility of any possible conflict fell upon the American and not upon the British authorities.

Our friend, Mr. Dana, expressed with vehemence of language which impressed us all, the serious consequences which would have followed, if a drop of American blood had been spilt in these conflicts. We have too good an opinion of our American consuls to think that they would have been much moved if one of their countrymen had been killed, while in the act of violating the law, in British Territory. The United States have laws as well as other nations against trespass, piracy and robbery, and it is not in the habit of nations to wage war in the protection of those of their countrymen who commit any of these crimes in a foreign land. The age of filibustering has gone by and no eloquence can restore it to the standard of a virtue.

However, a state of things which is calculated to create temptations such as were offered to American fishermen, in Canadian waters, should be at all times most carefully avoided, and it was the desire of both British and American statesmen to remove such dangerous and inflammable causes of conflict, which brought us to the Reciprocity Treaty of 1854.

By that Treaty, British waters in North America, were thrown open to United States citizens, and United States waters north of the 36th degree of north latitude were thrown open to British fishermen, excepting the salmon and shad fisheries, which were reserved on both sides. Certain articles of produce of the British Colonies and of the United States were admitted to each country, respectively, free of duty.

That Treaty suspended the operation of the Convention of 1818, as long as it was in existence. On the 17th of March, 1865, the United States Government gave notice that at the expiration of twelve months, from that day, the Reciprocity Treaty was to terminate. And it did then terminate and the Convention of 1818 revived, from the 17th March, 1866.

However, American fishermen were admitted, without interruption, to fish in British American waters, on payment of a license, which was collected at the Gut of Canso, a very narrow and the nearest entrance to portions of these waters. Some American vessels took licenses the first year, but many did not. The license fee having been raised afterwards, few vessels took a license and finally almost all vessels fished without taking any. Every one will understand the impossibility of enforcing that system. All American vessels having the right to fish in British American waters, under the Convention of 1818, those who wanted or professed to limit themselves to fishing outside of the 3 miles limit had the right to enter on the northern side of Cape Breton without taking a license. As long as that license was purely nominal, many took it in order to go everywhere without fear of cruisers or molestation. When our license fee was doubled and afterwards trebled, the number of those who took it gradually dwindled to nothing. The old troubles and irritation were renewed, and many fishermen have explained, before the Commission

how embarrassing it was, in many instances, to know, from the deck of a vessel, how far from the shore that vessel stood. Three miles have to be measured with the eye, not from the visible shore, but from low water mark. There are coasts which are left dry for several miles by the receding tide. When the tide is up, landmarks may be familiar to the inhabitants of the shore or frequent visitors of its water; but for the fisherman who comes there for the first or second time, or perhaps for the tenth time, but after intervals of years, it may be a difficult task to determine where he can fish with safety. And what can be more tempting, I should say tantalizing, than to follow a school of mackerel, which promises a full fare in one day and a speedy return home, with the mirage of a family to embrace and of profits to pocket? Should men be exposed to such temptations, when commercial inter-varied modes of settlement which is worth the life of a man?

Great Britain and the United States owed it to their noble common ancestry and to their close relationship, not to listen to the evil advice of passion, and to show to the world a new battlefield, where cool judgment and good will are the most successful arms.

With the termination of the Reciprocity Treaty, reappeared the cruisers and cutters among the fishermen, and irritation seemed to have acquired vigor and intensity during the suspension. Other international differences had grown up, from the beginning of the civil war, and had accumulated, during the whole of that war, to such an extent that a spark might start a serious conflict. Fortunately cool heads were predominant in the two governments; the Joint High Commission was appointed, and the Washington Treaty reduced to a money question, what, in former times, would have cost the lives of thousands of men and would have, besides, entailed on both sides an expenditure of money ten times more considerable than the compensatory indemnities resulting from that Treaty. Ten articles of that Treaty concern the fisheries, from the 18th to the 25th, both inclusive, and the 32nd and 33rd. In addition to the liberties granted to them by the Convention of 1818, Americans are admitted, by art. 18, to fish every where, in common with British subjects, without being restricted to any distance from the coast, with permission to land for the purpose of drying their nets and curing their fish, provided they do not interfere with the rights of private property.

On the other hand British subjects are admitted, by art. 19, to the same liberties on the eastern sea coasts and shores of the United States, north of the 39th parallel of north latitude.

Art. 21 declares that as long as the Treaty shall subsist, fish oil and fish of all kinds (except fish of the inland lakes and of the rivers falling into them, and except fish preserved in oil) being the produce of the fisheries of the United States or of the Dominion of Canada, shall be admitted into each country, respectively, free of duty.

By Art. 22 it is agreed that Commissioners shall be appointed to determine, having regard to the privileges accorded by the United States to the subjects of Her Majesty, the amount of any compensation which ought to be paid in return for the privileges accorded to the citizens of the United States, under article 18,—and that any sum of money which the Commissioners may so award shall be paid, in a gross sum, within twelve months after the award given.

Article 33 stipulates that the fisheries articles shall remain in force for the period of ten years from the date at which they may come into operation, by the passing of the requisite laws, on both sides, and further, until the expiration of two years after notice given by either of the parties of its wish to terminate the same.

The Treaty came into operation on the 1st July, 1873. Great Britain claims from the United States a sum of \$14,880,000 for the concession of the privileges granted to the citizens of the United States for the period of twelve years.

On the part of the United States it is contended that the liberty of fishing in their waters and the admission of Canadian fish and fish oil, duty free, in the markets of the United States is equivalent to what Great Britain obtains by the treaty.

The questions now to be enquired into are: 1st. Is the British claim proved, and to what extent? 2nd. Have the United States rebutted the evidence adduced on behalf of Her Majesty, and have they proved a set-off to any and what extent?

Wherever Americans have expressed a disinterested opinion about the Gulf and other Canadian fisheries, they have never underrated their value, as they have in this case, where they are called upon to pay for using them.

At a time when no diplomatist had conceived the idea of laying the claim of the United States to these fisheries, on the heroic accomplishments of our army and navy from the old British colony of Massachusetts, as we have heard from the eloquent and distinguished United States counsel, before this Commission,—at a time when, emerging from war, fit occasions offered themselves for reminding Great Britain of what she owed to the bravery of Massachusetts boys, who had planted her flag in the place of the French colors over this Dominion,—in these times the right of fishing in those waters had accrued to the American people from no other origin than a concession by treaty, and no other basis than the *uti possidetis*. When another Commission is appointed by England and France to settle the differences which exist between them in reference to the Newfoundland Fisheries, I doubt much if the political oratory of our American friends could not, with a little change of tableaux and scenery, be turned to some account,—such as the French reminding the English people of the miseries endured by Jacques Cartier during the winter he spent at Sable Island on his way to Newfoundland, Louisbourg and Quebec to bring European civilization among the aboriginal tribes.

Although it is hard to vouch for anything in such matters of fancy, I doubt much whether France will recall the heroic deeds of her Cartiers and Champlains to make herself a title to these fisheries. She will not make such light work of her Treaties as our friends have done.

In the line of historical titles adopted by our learned friends, the Scandinavians would wipe out even the claim of Columbus, for three or four centuries before the discoveries of the great Genoese navigator, some of their fishermen had visited profitably the Banks of Newfoundland. My learned friends should be as much alarmed at the consequences of their fiction, as Mr. Seward was when dealing with the headland question in the Senate—page 9 of the British brief—he pointed out that the construction put upon the word bay, by those who confined them to bodies of water six miles wide at their mouth, would surrender all the great bays of the United States.

While listening with pleasure to the narration of the great achievements of the Massachusetts boys, we could not understand why they shed their blood for those poor and unproductive fisheries. We looked a little at history, we searched for a confirmation of the pretensions of our friends, and we found a very different account, in the writings of their great statesmen, both as to the basis of their claim and as to the value of the fisheries.

John Quincy Adams, who represented with others, as has already been mentioned, the United States, at the Treaty of Ghent, in 1814, collected information. He applied to Mr. James Lloyd, and this gentleman, writing from Boston, on the 8th of March, 1815, communicated to him what will be found from page 211 to page 218 of his "Duplicate Letters." A few citations will not be out of place here:—

"The shores, the creeks, the inlets of the Bay of Fundy, the Bay of Chaleurs, and the Gulf of St. Lawrence, the Straits of Bellisle, and the Coast of Labrador, appear to have been designed by the God of Nature as the great ovium of fish;—the inexhaustible repository of this species of food, not only for the supply of the American, but of the European continent. At the proper season to catch them in endless abundance, little more of effort is needed than to bait the hook and pull the line and occasionally even this is not necessary. In clear weather, near the shores, myriads are visible, and the strand is at times almost literally paved with them."

"The Provincials had become highly alarmed at the expansion of this fishery and trader jealous of its progress and enormous at its endurance; they therefore, of late years, have repeatedly memorialized the government in England, respecting the fisheries carried on by the Americans, while the whole body of Scottish adventurers, whose trade both in imports and exports, and control over the inhabitants, it curtailed, have turned out in full cry and joined the chorus of the colonial governments in a crusade against the encroachments of the infidels, the disbelievers in the divine authority of kings, or the rights of the provinces, and have pursued their objects so assiduously that, at their own expense, as I am informed from a respectable source, in the year 1807 or 8, they stationed a watchman in some favorable position near the Straits of Canso, to count the number of American vessels which passed those straits on this employment; who returned nine hundred and thirty-eight as the number actually ascertained by him to have passed, and doubtless many others, during the night or in stormy or thick weather, escaped his observation and some of these aggressors, have distinctly looked forward with gratification to a state of war, as a desirable occurrence, which would, by its existence, annul existing treaty stipulations, so injurious, as they contend, to their interests and those of the nation."

"The Coast and Labrador Fisheries are prosecuted in vessels of from 40 to 120 tons burthen, carrying a number of men, according to their respective sizes, in about the same proportion as the vessels on the Bank Fishery. They commence their voyages in May, and get on the fishing ground about the 1st of June, before which time bait cannot be obtained. This bait is furnished by a small species of fish called *capling*, which strike inshore at that time, and are followed by immense shoals of codfish which feed upon them. Each vessel selects her own fishing-ground, along the coast of the Bay of Chaleurs, the Gulf of St. Lawrence, the Straits of Bellefleur, the Coast of Labrador, even as far as Cumberland Island, and the entrance of Hudson's Bay, thus improving a fishing-ground reaching in extent from the 45th to the 68th degree of north latitude."

"In choosing their situation, the fishermen generally seek some sheltered and safe harbor, or cove, where they anchor in about six or seven fathoms water, unbend their sails, stow them below, and literally making themselves at home, dismantle and convert their vessels into habitations at least as durable as those of the ancient Scythians. They then cast a net over the stern of the vessel, in which a sufficient number of capling are soon caught to supply them with bait from day to day. Each vessel is furnished with four or five light boats, according to their size and number of men, each boat requiring two men. They leave the vessel early in the morning, and seek the best or sufficiently good spot for fishing, which is frequently found within a few rods of their vessels, and very rarely more than one or two miles distant from them, where they haul the fish as fast as they can pull their lines, and sometimes it is said the fish have been so abundant as to be gaff or scooped into the boats, without even a hook or line; and the fishermen also say that the codfish have been known to pursue the capling in such quantities, and with such voracity, as to run in large numbers quite out of water, on to the shores. The boats return to the vessels about nine o'clock in the morning, put their fish on board, salt and split them; and after having fished several days, by which time the salt has been sufficiently struck in the fish first caught, they carry them on shore and spread and dry them on the rocks or temporary flakes. This routine is followed every day, with the addition of attending to such as have been spread, and carrying on board and stowing away those that have been sufficiently cured, until the vessel is filled with dried fish, fit for an immediate market, which is generally the case by the middle or last of August, and with which she then proceeds immediately to Europe, or returns to the United States; and this fish, thus caught and cured, is esteemed the best that is brought to market, and for several years previous to that of 1808, was computed to furnish three fourth parts of all the dried fish exported from the United States."

The following statements to be found on page 219 of the work were furnished to Mr. Adams by a person, whom he qualifies as a very respectable Merchant, who dates his letter Boston, May 20th, 1815:

"My calculation is, that there were employed in the Bank, Labrador and Bay fisheries, the years above mentioned, 1232 vessels yearly, viz., 584 to the Banks, and 648 to the Bay and Labrador. I think the 584 Bankers may be put down 36,540 tons, navigated by 4,927 men and boys, (each vessel carrying one boy,) they take and cure, annually, 510,700 quintals of fish; they average about three fares a year, consume, annually, 81,170 hhds. salt, the average cost of these vessels is about \$2,000 each; the average price of these fish at foreign markets is 80 per quintal; these vessels also make from their fish, annually, 17,520 barrels of oil, which commands about \$10 per barrel, their equipments cost about \$900, annually, exclusive of salt."

"The 648 vessels that fish at the Labrador and Bay, I put down 48,600 tons, navigated by 5,832 men and boys; they take and cure, annually, 648,000 quintals of fish; they go but one fare a year; consume, annually, 97,200 hhds. of salt. The average cost of these vessels is about \$1600; the cost of their equipments, provisions, etc., is \$1050; those descriptions of vessels are not so valuable as the bankers, more particularly those that go from the district of Maine, Connecticut and Rhode-Island, as they are mostly sloops of no very great value; most of these vessels cure a part of their fish where they catch them, on the beach, rocks, etc., and the rest after they return home; several cargoes of dry fish are shipped yearly from the Labrador direct for Europe. The usual markets for those fish are in the Mediterranean, say Alcant, Leghorn, Naples, Marseilles, etc., as those markets prefer small fish, and the greatest part of the fish caught up the bay and Labrador are very small. The average price of these fish at the market they are disposed of is \$5; these vessels also make from their fish about 20,400 hhds. of oil, which always meets a ready sale and at handsome prices, say from \$8 to \$12 per barrel, the most of it is consumed in the United States."

1232 vessels employed in the Bank, Bay and Labrador fisheries, measuring.....	tons	85,140
Number of men they are navigated by.....		10,150
Number of hhds. salt they consume.....		178,370
Quantity of fish they take and cure.....		1,158,700 quintals,
Barrels of oil they make.....		37,520 barrels.

"There are also a description of vessels called jiggers or small schooners of about 30 to 45 tons that fish in the South Channel, on the Shoals and Cape Sables, their number 300, they carry about 4 or 5 hands, say 1200 men and take about 75,000 qts. of fish, annually; consume 12,000 hhds. of salt, and make about 4,000 barrels of oil; their fish is generally sold for the West Indies and home consumption."

"There are another description of fishing vessels commonly called Chebacco Boats or Pink Stems; their number 600; they are from 10 to 23 tons, and carry two men and one boy each, say, 1,800 hands; they consume 15,000 hhds. of salt, and take and cure 120,000 quintals of fish, annually. These fish also are wholly used for home and West India market, except the very first they take early in the spring, which are very nice indeed, and are sent to the Bilbao market in Spain, where they always bring a great price; they make 9,000 barrels of oil; these vessels measure about 10,300 tons."

"There are also about 200 schooners employed in the mackerel fishery, measuring 8,000 tons, they carry 1,000 men and boys, they take 50,000 barrels, annually, and consume 6,000 hhds. salt."

"The alewife, shad, salmon and herring fishery is also immense, and consumes a great quantity of salt."	
"Whole number of fishing vessels of all descriptions....."	2,332
Measuring.....	115,940
Number of men navigated by.....	15,059
Salt they consume.....	265,370 hhds.
Quantity of fish they take and cure.....	1,553,700 quintals,
Number of barrels of oil.....	50,520 barrels,
Number of barrels of mackerel.....	50,000 barrels.

"There are many gentlemen who assert, and roundly too, that one year there were at the Labrador and Bay, over 1,700 sail beside the bankers; but I feel very confident they are much mistaken, it is impossible it can be correct."

Then Mr. Adams gives the authority of his approbation, at page 233, to the following statements from "Colquhoun's Treatise on the Wealth, Power and Resources of the British Empire," 2d Ed. 1815,

"The value of these fisheries, in table No. 8, page 36, is estimated at £7,550,000 sterling.
"New Brunswick and Nova Scotia, from being both watered by the Bay of Fundy, enjoy advantages over Canada, which more than compensate a greater sterility of soil. These are to be traced to the valuable and extensive fisheries, in the Bay of Fundy, which, in point of abundance and variety of the finest fish, exceed all calculation, and may be considered as a mine of gold—a treasure which can not be estimated too high, since with little labor, comparatively speaking, enough could be obtained to feed all Europe." pp. 312-313.

"Since the trade with the United States has been so greatly obstructed, the produce of the fisheries in the British colonies thus encouraged by the removal of all competition, has been greatly augmented; and nothing but a more extended population is required to carry this valuable branch of trade almost to any given extent."

"It will be seen by a reference to the notes in the table annexed to this chapter, that the inhabitants of the United States derive innumerable advantages, and employ a vast number of men and vessels in the fisheries in the river St. Lawrence, and on the coast of Nova Scotia, which exclusively belongs to Great Britain. The dense population of the Northern States, and their

local situation in the vicinity of the most prolific fishing stations, have enabled them to acquire vast wealth by the indulgence of this country? p. 313.

"It ought ever to be kept in view, that (with the exception of the small islands of St. Pierre and Miquelon restored to France by the Treaty of Paris, in May, 1814), the whole of the most valuable fisheries of North America exclusively belong at this present time to the British Crown, which gives to this country a monopoly in all the markets in Europe and the West Indies, or a right to a certain valuable consideration from all foreign nations, to whom the British Government may concede the privilege of carrying on a fishery in those seas, p. 314.

"Private fisheries are a source of great profit to the individuals, in this and other countries, who have acquired a right to such fisheries. Why, therefore, should not the United Kingdom derive a similar advantage from the fisheries it possesses within the range of its extensive territories in North America, (perhaps the richest and most prolific in the world), by declaring every ship and vessel liable to confiscation which should presume to fish in those seas without previously paying a toneage duty, and receiving a license limited to a certain period when fish may be caught, with the privilege of curing such fish in the British territories? All nations to have an equal claim to such licenses, limited to certain stations, but to permit none to supply the British West Indies, except his majesty's subjects, whether resident in the colonies or in the parent state? p. 315.

St. John's of Prince Edward's Island.

"**FISHERIES.**—This island is of the highest importance to the United Kingdom. Whether the possession of it be considered in relation to the Americans, or as an acquisition of a great maritime power, it is worthy of the most particular attention of government. Mr. Stewart has justly remarked, in his account of that island, (page 296), that the fishery carried on, from the American States, in the Gulf of St. Lawrence, for some years past, is very extensive and is known to be one of the greatest resources of the wealth of the Eastern States, from which about 2000 schooners, of from 70 to 100 tons, are annually sent into the Gulf; of these about 1400 make their fish in the Straits of Belle Isle and on the Labrador shore, from whence what is intended for the European market is shipped off, without being sent to their own ports. About six hundred American schooners make their fares on the north side of the island, and often make two trips in a season, returning with full cargoes to their own ports, where the fish are dried. The number of men employed in this fishery is estimated at between fifteen and twenty thousand, and the profits on it are known to be very great. To see such a source of wealth and naval power on our own coasts, and in our very harbours, abandoned to the Americans, is much to be regretted, and would be distressing, were it not that the means of re-occupying the whole, with such advantages as must soon preclude all competition, is afforded in the cultivation and settlement of Prince Edward's Island." pp. 316, 318.

It must be remembered that these statements were for the last 10 years of the last, and the first 10 years of the present century.

We are not informed where the 50,000 barrels of mackerel were then caught, but we have the opinion of Senator Tuck, cited at pages 9 and 10, of British Brief, who says: "Perhaps I should be thought to charge the Commissioners of 1818 with overlooking our interests. They did so in the important remembrance which I have quoted, but they are obnoxious to no complaint for so doing. In 1818, we took no mackerel on the coasts of British possessions, and there was no reason to anticipate that we should ever have occasion to do so. Mackerel were then found as abundant on the coast of New England as anywhere in the world, and it was not until years after that this beautiful fish, in a great degree, left our waters. The Mackerel fishery on the provincial coast has principally grown up since 1828, and no vessel was ever licensed for that business in the United States till 1838. The Commissioners in 1818 had no other business but to protect the Cod fish, and this they did in a manner generally satisfactory to those most interested."

From the assertions of seemingly well-informed Gloucester officials, accepted as such by the American Counsel, the state of things, described by these Boston gentlemen in 1815, would have undergone a complete change, not progressively and in accordance with the laws of nature; but on the contrary, the species and quantity of fish caught in our waters, and the number of vessels and men engaged in that business, have gradually become more and more insignificant. The magnates of cod and mackerel from Gloucester and other ports, who had draped themselves in lofty statistics for the Centennial, have come here to explain once more that all is not gold that glitters. They took off their Centennial costume, as people do after a fancy ball,—they humbled themselves to the last degree of mortification, contending that the Gulf fisheries had reduced them to beggary, they having lost, some \$325, others only \$128, on every trip they had made there during scores of years in succession. People who do not know those hardy and courageous fishermen of Gloucester, would hardly believe that some of them have gone through 170 trips consecutively, without ever flinching in their Spartan stoicism, under an average loss of \$225 each trip! Who should wonder, if, in their disgust of such an ungrateful acknowledgement, mackerel should have gone to distant zones, where they could be better appreciated!

Cool philosophers thought they were bound to reduce to nine the wonders of the world. They were mistaken. Here is that wonderful town of Gloucester, State of Massachusetts, in the United States of America, which has been built, and has grown up rich and prosperous, by accumulating losses and ruins upon former losses and ruins. The painful history of its disasters should be inscribed as the tenth wonder.

Fishing, no doubt, like all other industries, has its fluctuations of success and partial failure; but as it rests upon an inexhaustible supply to be found somewhere, it never can be said to be an absolute failure. It was only within a few years that experimental science was applied to fish. Science is diffident, as shown by Prof. Baird; in fact, science teaches uncertainty and unbelief, because the more a man learns, the more he finds himself ignorant,—the more he labors to know if what he thought to be one thing, is not another thing. The witnesses from Gloucester are foremost in that school of philosophers, who doubt of their own existence. Their town is already a myth; their families would have soon been the same; and alas! themselves, if they had been too long before this Commission, would have to kick each other to know whether they were myths or living beings.

I will have a more fitting occasion for reviewing the evidence brought on behalf of the United States generally. For the moment the contrast was rather tempting,—between what Americans of our days thought of our fisheries, and what their ancestors thought almost a century ago. I proceed now to show that the British claim has been proved.

MR. DANA:—That was as to the cod-fishery.

MR. DOCTRINE:—I think they have made very little difference.

MR. DANA:—Cod-fishing is prosperous now.

MR. FORTRE:—It must not be forgotten, as one of our learned friends expressed himself in reference to other matters, they have now a point to carry. When Mr. Adams was collecting his information, he had no point to carry, but simply to give a plain statement of facts. Those rich fisheries, which were spoken of in such glowing terms in 1815 have, it is asserted, declined to nothing, because we ask for their value. I never heard the matter more plainly and squarely laid down than it was yesterday, by my learned friend, Mr. Whiteway, when he said, "Now, that you possess these fisheries, how much would you ask for their surrender?" If we were to turn the tables, in this manner, we would see the Gloucester gentlemen coming here and describing the fisheries in Centennial colors.

MR. DANA:—Our testimony was all to the effect that the cod-fishery is still profitable in Gloucester.

MR. DOCTRINE:—I think at this hour we must understand the bearing of the testimony, or we will never do so. The fisheries in Maine have been completely destroyed and no longer exist. I will read from the testimony on that point in a few moments.

The number of American vessels frequenting the British-American waters could not be estimated with any degree of precision. Witnesses could only speak of what they had seen, and but very few of them could, within a

short time, go over all the fishing grounds and make an estimate, even if they had gone round with that object in view. They had to trust to what they had heard from other parties, who about the same time had been in other portions of these waters, and by combining the knowledge acquired from others with their own, they were able to give a statement of the number of vessels frequenting those waters.

Capt. Fortin, p. 328 of British evidence, states that in the Province of Quebec only, the extent of the coast on which the fisheries of Canada are conducted is about 1,000 miles; and Prof. Hind, p. vii. of his valuable paper, estimates the area of coastal waters conceded to the United States by the Treaty, to be about 11,900 square miles. Americans have been in the habit of fishing all around the Bay of Fundy and on the south-east coast of Nova Scotia, without counting the Gulf; but the bulk of the American fleet entered the Gulf, principally by the Gut of Canso, and also by going round Cape Breton, or by the Strait of Belle Isle, coming from Newfoundland. We have a mass of evidence that they were on all points at the same time and in large numbers.

Babson, 20th American Affidavit, estimates the American fleet at 750 sail.

Plumer, 22d	"	"	"	700
Pierce, 24th	"	"	says from 700 to 800.	
Gorring, 26th	"	"	says 700.	
Womson, 30th	"	"	" 700.	
Embree, 167th	"	"	says 700 to 800.	
Grant, 186th	"	"	says 700.	

Bradley, the first American witness examined before the Commission, in answer to the American counsel, p. 2: Q. Give an approximate amount to the best of your judgment? A. 600 or 700 certainly. I have been in the Bay with 900 sail of American vessels, but the number rather diminished along the last years I went there. Everything tended to drive them out of the Bay, cutters, and one thing and another, and finally I went fishing in our own waters and did a good deal better.

Graham, p. 106 of American Evidence, undertakes to contradict Bradley,—but finally he has no better data than Bradley to guide himself, and after all his efforts, he admits the number to have been 600 sail.

This was during the existence of the Reciprocity Treaty, and on this point, as well as on all others, it is to that period that we must refer, to find analogy of circumstances.

The average catch of these vessels presents naturally a great diversity of appreciation, and on this, the causes which divided the witnesses are more numerous than those concerning the number of vessels. First the tonnage of the fishing vessels, varying from 30 tons to 200 tons, must have regulated the catch more or less. When a vessel had a full cargo, she had to go home, even if fish had continued to swarm around her. Then the most favored spots could not admit of the whole fleet at the same time. They had to scatter over the whole fishing area with fluctuations of luck and mishap. We must add to this that many of the crews were composed of raw material, who had to obtain their education and could not bring very large fares. Some Naturalists have expressed the opinion that fish are inexhaustible, and that no amount of fishing can ever affect the quantity in any manner. When it is thought that one single cod carries from 3 to 5 millions of eggs for reproduction, one mackerel half a million, and one herring 30,000, as testified by Prof. Baird, on pages 455 to 461 of the United States evidence; there was some foundation for that opinion, but several causes have been admitted as diminishing and sometimes ruining altogether some species of fish. Predacious fish, such as shark, horse-mackerel, dogfish, bluefish, and probably many others have had both effects on some species. (See Professor Baird's evidence, at pages 462, 476 and 477.) A more rapid mode of destruction has been universally recognized in the use of seines or purse-seines, by which immense quantities of fish of all kinds and sizes are taken at one time. By that means the mother fish is destroyed while loaded with eggs. Fish too young for consumption or for market are killed and thrown away. It is the universal opinion among fishermen that the inevitable effect of using purse-seines must eventually destroy the most abundant fisheries, and many American witnesses attribute the failure of the mackerel fishery on their own coast, in 1877, to that cause. It is true that this theory is not accepted by Professor Baird, who however has no decided opinion on the subject, and who has given the authority of a publication, which he controls, to the positive assertion that this mode of catching fish is most injurious. P. 476-477.

When a vessel of sufficient tonnage is employed, that is from 40 tons upwards, the catch of mackerel has varied from 300 to 1550 barrels in a season for each vessel.

Here is the evidence on the subject of mackerel:—

Chiverie, British evidence, p. 11, makes the average 450 barrels per vessel in a period of 27 years. Some years, that average reached 700 barrels per vessel.

MacLenn, p. 25, says the average has been 500 per vessel during the twenty years, from 1854 to 1874.

Campion, pp. 32, 34, 38, average for 1863, 650 barrels; 1864, from 600 to 700; 1865, over 670; 1877, some caught 300 barrels with seines, in one week. One vessel seined a school estimated at 1000 barrels.

Poirier, p. 62, average catch 500 to 600 per vessel in one season.

Harbour, p. 79, " " 500 " " "

Sinnett, p. 84, " " 500 " " "

Grenier, p. 87, " " 500 to 600 " " "

McLeod, p. 98, " " 500 " " "

Mackenzie, p. 129, average catch of mackerel 700 barrels per vessel.

Grant, p. 182, " " 600 to 700 " "

Purell, p. 197, " 250 per trip.

McGuire, p. 210, average catch of mackerel, 600 per season.

Forty-four other witnesses examined, on behalf of the Crown, and cross-examined before the Commission, have stated the same fact. These statements are confirmed by the following American witnesses:—

Bradley, American evidence, p. 2,	600 barrels.
Stapleton, " p. 10,	600 "
Kemp, " p. 63,	600 to 700.
Freeman, " p. 75,	600 to 750.
Friend, " p. 119,	520.
Orne, " p. 127,	233 per trip = 466 per season.
Leighton, " p. 140,	361 " = 722 "
Riggs, " p. 156,	342 " = 684 "
Rowe, " p. 161,	246 " = 492 "
Ebitt, " p. 175,	375 " = 650 "
Cook, " p. 181,	280 " = 560 "

Smith, American evidence,	p.—186.	274	per trip	=	548	per season.
McLunis,	"	p.—191.	457	"	=	914
Gardner,	"	p.—209.	240	"	=	480
Martin,	"	p.—211.	273	"	=	546
Turner,	"	p.—226.	270	"	=	540
Rowe,	"	p.—235.	259	"	=	518
Lakeman,	"	p.—325.	443	"	=	886

In order that any one may verify the correctness of this estimate, for every witness, I may state that this is the process through which I arrived at it. I took the number of barrels caught in each trip, by every witness, and divided the total by the number of trips. Some witnesses have made more than that average; others have made less. I abstained from taking the larger and the smaller catches; and, in this respect, I have followed a mode of estimating the matter, which has been incorporated in our legislation. When, in 1854, Seigniorial tenure was abolished in Lower Canada, indemnity was to be paid to the seigniors who conceded, for *lots-et-ventes*; that is to say, a kind of penalty upon any sale or mutation of property which took place, consisting of one-twelfth of purchase money. There was no fine imposed on property being transmitted by inheritance, only in case of mutation by sale, or anything equivalent to a sale, such as exchange. Then to estimate the value of that right, which was so variable, because during some years there would be almost no mutations in a seignior, while during other years there would be many; a rule was adopted by which the income of the Seignior, from that source, for 14 years, was taken, the two highest and two lowest years struck out, and the 10 other years held to constitute an average, and the amount capitalised at 6 per cent, was to be paid. In that matter they were dealing with facts which could be found in the books of the Seigniories; it was not based upon what my learned friend, Mr. Dana, has so well called the swimming basis; while here the calculation is certainly surrounded with much greater difficulty. Some of the fishermen have made only one trip in a year, but it was their own fault, as they could have made two and three. I have calculated on two trips a year only, although many have made three, and would have justified me in adding a third to the amount per season. I remained within that medium where the Latin proverb says that truth dwells. I have given the calculations for mackerel. Here is that for codfish:

- Purcell, p. 198. Has known of 1,000, but does not state whether quintals or barrels.
 Bigelow, p. 221. Spring codfisheries on Western and Lallave Banks, summer and autumn fisheries on the Grand Bank. They make from six to twenty trips in a year, with fresh cod. No quantity stated.
 Stapleton, p. 226. Caught 600 quintals within 2½ miles of Prince Edward Island.
 Baker, p. 269. Has seen 200 American vessels codfishing in one part, between Cape Gaspe and Bay Chaleur, each vessel catching 700 quintals.
 Flynn, p. 270. 700 quintals per vessel, caught on Miscou and Orphan Banks, all the bait for which is caught inshore and consist in mackerel and herring.
 Lebrun, p. 289.—700 to 800 quintals, from Cape Chatte to Gaspe, per vessel.
 Roy, p. 293.—Has seen 250 to 300 American vessels cod-fishing.
 John McDonald, p. 374.—600 quintals.
 Sinnott, p. 85.—300 draughts or 600 quintals.

The following relates to herring:—

- Fox, Customs Officer; Brit. evid., p. 114.—600,000 barrels entered outward since 1854; at least one-half of the vessels have failed to report. This is near Magdalen.
 Purcell, p. 198.—50 vessels fishing and catching each 1000 barrels.
 McLean, p. 235.—In Bay of Fundy, 100 to 125 American vessels fishing for herring in winter, and catching 7 to 10 million herrings, which went to Eastport
 Lord, p. 245.—From \$900,000 to \$1,000,000 worth of herring caught annually, by Americans, from Point Lepreaux, including West Isles, Campobello and Grand Manan, Bay of Fundy.
 McLaughlin, p. 254-255, estimates at \$1,500,000, the annual catch of herring by Americans, around the Island and the mainland of Bay of Fundy.

HALIBUT, POLLOCK, HAKE, HADDOCK, were caught by Americans all over Canadian waters,—but in smaller quantity, and their separate mention here would take more time and space than the matter is worth. However, we will see what is said concerning these different kinds in the summary of evidence concerning the inshore fisheries.

In the discharge of my duty to my Government, I have thought proper to go over grounds which laid at the threshold of the question at issue,—first, because the representatives of the United States Government had selected them as a fair field for surrounding that question with artificial clouds of prejudice and fictitious combination of facts and fancy,—and in the second place, because I thought that the main question would be better understood, if the path leading to it was paved with a substantial and truthful narration of the circumstances which had brought this Commission together.

The United States are bound to pay compensation, not for fishing generally in waters surrounded by British territory, but for being allowed to fish within a zone of three miles, to be measured, at low water mark, from the coast or shores of that territory, and from the entrance of any of its bays, creeks or harbors, always remembering that they had the right to fish all around Magdalen Islands and the coast of Labrador, without restriction as to distance. The functions of this Commission consist in determining the value of that inshore fisheries, as compared to a privilege of a similar character, granted by the United States to the subjects of Her Majesty, on some parts of the United States coasts, and then to enquire what appreciable benefit may result to the Canadians, from the admission of the produce of their fisheries in the United States, free of duty, in excess of a similar privilege granted to the United States citizens, in Canada; and if such excess should be ascertained, then to apply it as a set-off against the excess of the grant made to the United States over that made to the subjects of Her Majesty.

As the learned agent and counsel, representing the United States, have often criticised the acts of the colonists, when they constrained the Americans to execute the treaties and to obey the municipal laws, first of the separate Provinces, and then of the Dominion, probably with the object of contrasting the liberality of their government with the illiberality of our own; I would like to ask which of the two governments went more open-handed in the framing of the fishery clauses of the Treaty of Washington? Did we restrict the operations of the Americans to any latitude or geographical point, over any part of our waters? Not at all. We admitted them everywhere; while on their part they marked the 39th parallel of north latitude on one of their coasts, to wit: the eastern sea coast or shores, as the herculean column beyond which we could not be admitted. The immediate and practical consequence was that we granted the liberty to fish over 11,900 miles of sea coasts, where the bulk of the fishing is located; and we were

granted the right to fish over 3,500 miles of sea coasts, where no fishing is done, of any consequence, by the Americans themselves; and where no British subject has ever been seen. (As to area, see Prof. Hind's paper, page VII.) In this instance the Americans cannot contrast the good will of the Imperial Government with the illiberality of the colonists, because the latter were represented in the Joint High Commission, by their first Minister, who assented to the Treaty, and the Dominion Parliament, and the Legislatures of P. E. Island, and of Newfoundland, equally assented, through solemn Parliamentary Acts.

In dealing with the value and extent of the North British-American coast fisheries I think I may, with all safety, say, that in the waters surrounding the three-mile limits, there is no deep-sea fisheries at all. The assertion may appear hazardous to our American friends, but I am sure they will agree with me, when I remind them of the whole tenor of their own evidence. No doubt their witnesses have made use of the words deep-sea fisheries in contradistinction to the shore fisheries proper; but is there one of their witnesses who has ever pretended to have caught fish in any place other than banks, when it was not inshore?

The whole of the witnesses on both sides have testified that when they were not fishing inshore they were fishing around Magdalen Islands, which is another shore, on Orphan, Bradley or Miscoon, or other Banks; but as regards a deep sea fishery in contradistinction to banks or shore fishery, there is no such thing in the whole evidence.

Sir ALEXANDER GALT:—Are you now referring to the fisheries generally, or to the mackerel fishery in particular?

Mr. DOCTRÉ:—To the codfishery also. Codfish is taken on banks.

Mr. DANA:—It is a question of names—what you call a bank fishery.

Mr. DOCTRÉ:—Is not the result of the whole evidence on both sides, that fish is to be found on the coast, within a few miles, or on banks, and no where else? This is the practical experience of all fishermen. Now, science explains why it is so. That class of evidence is unanimous on this most important particular, namely, as to the temperature necessary to the existence of the cold water fish in commercial abundance, such as the cod and its tribe, the mackerel and the herring, which include all the fish valuable to our commerce. According to the evidence I shall quote, the increasing warmth of the coastal waters of the United States as Summer advances, drives the fish off the coast south of New England into the deep sea, and puts a stop to the Summer fishing for these fish on those parts of the coast in the United States,—a condition of things due to the shoreward swing of the Gulf Stream there. On the other hand, it is stated that on the coasts of British America, where the Arctic current prevails, the fish come inshore during the Summer months, and retire to the deep sea in the Winter months.

Professor Baird says, on page 455 of his evidence before the Commission, speaking of the codfish in answer to the question put by Mr. Dana, "What do you say of their migrations?" Answer—"The cod is a fish the migrations of which cannot be followed readily, because it is a deep-sea fish and does not show on the surface, as the mackerel and herring; but so far as we can ascertain, there is a partial migration, at least some of the fish don't seem to remain in the same localities the year round. They change their situation in search of food, or in consequence of the variations in the temperature, the percentage of salt in the water, or some other cause. In the south of New England, south of Cape Cod, the fishing is largely off-shore. That is to say, the fish are off the coast in the cooler water in the Summer, and as the temperature falls approaching Autumn, and the shores are cooled down to a certain degree, they come in and are taken within a few miles of the coast. In the Northern waters, as far as I can understand from the writings of Professor Hind, the fish generally go off shore in the Winter time, excepting on the south side of Newfoundland, where, I am informed, they maintain their stay, or else come in in large numbers; but in the Bay of Fundy, on the coast of Maine and still further north they don't remain as close to the shore in Winter as in other seasons."

You will observe that Professor Baird limits his statement that the warm water in Summer drives the fish off the coasts of the United States to the south of New England only. The water appears to be cold enough for them on the coast of Maine in Summer to permit of their coming in shore. But now let us see what he says of the condition of the fisheries there. In his official report for 1872 and '73, the following remarkable statement is to be found:—

"Whatever may be the importance of increasing the supply of salmon, it is trifling compared with the restoration of our exhausted Cod-fisheries; and should these be brought back to their original condition, we shall find within a short time, an increase of wealth on our shores, the amount of which it would be difficult to calculate. Not only would the general prosperity of the adjacent States be enhanced, but in the increased number of vessels built, in the larger number of men induced to devote themselves to Maritime pursuits, and in the general stimulus to everything connected with the business of the seafaring profession, we should be recovering in a great measure, from that loss which has been the source of so much lamentation to political economists and well-wishers of the country."—*Page XLV. Report of Commissioner of Fish and Fisheries, 1872-73.*

It thus appears from the testimony of Professor Baird, that the cod are driven off the shores of the United States south of New England by the increase of temperature in the summer months, and on the New England and Maine shores the cod fisheries are exhausted. The only conclusions that can be drawn from these facts are that the sole dependence of the United States fishermen for cod, which is the most important commercial sea fish, is, with the single exception of George's shoals, altogether in waters off the British American coast line.

Professor Hind says in relation to this subject and in answer to the questions,

"What about the cod? Is it a fish that requires a low temperature?" A. With regard to the spawning of cod, it always seeks the coldest water wherever ice is not prech. In all the spawning grounds from the Strait of Belle Isle down to Massachusetts Bay,—and they are very numerous indeed,—they spawn during almost all seasons of the year, and always in those localities where the water is coldest, verging on the freezing point. That is the freezing point of fresh water, not of salt, because there is a vast difference between the two.

The cause of the spawning of the cod and the mackerel, at certain points on the United States coasts, is thus stated by the same witness:

"Q. Now take the American Coast, show the Commission where the cold water strikes. A. According to Professor Baird's reports there are three notable points where the Arctic current impinges upon the Banks and shoals within the limits of the United States waters and where the cod and mackerel spawning grounds are found. If you will turn in mind the large map we had a short time ago, there were four spots marked on that map as indicating spawning grounds for mackerel. If you will lay down upon the chart those points which Professor Verrill has established as localities where the Arctic current is brought up, you will find that they exactly coincide. One spot is the George's shoals."

So dependant is the cod upon cold waters for its existence that Prof. Baird tells in reply to the question put by Mr. Thomson:—"Could cod from your knowledge live in the waters which are frequented by the mullet?" "No; neither could the mullet live in the waters which are frequented by the cod."—p. 471. Now, in another portion of his evidence Prof. Baird says, (page 116) that "the mullet is quite abundant at some seasons on the south side of New England;" and thus we have in a different manner explained the reason why the cod cannot live in Summer on the shores of the United States south of Cape Cod on account of the water being too warm, and the evidence of the witness is confirmed by the following evidence of Prof. Hind:

"Q. Are those three fishing localities on the American coast, Ploek Island, Georges Bank, and Stellwagen's Bank in Massachu-

sets Bay affected every year, and if so, in what way, by the action of the Gulf Stream? A. The whole of the coast of the United States, south of Cape Cod, is affected by the Gulf Stream during the summer season. At Stonington the temperature is so warm even in June that the cod and haddock cannot remain there. They are all driven off by this warm influx of the summer flow of the Gulf Stream. The same observation applies to certain portions of the New England coast."—*Rebuttal Evidence* p. 3.

The testimony of these two scientific witnesses then agrees completely with reference to the important question of temperature. We all know of the enormous fleet annually sent by the Americans to the Grand Banks of Newfoundland, the Nova Scotia Banks and the various Banks in the Gulf of St. Lawrence. With the exception of the comparatively small quantity of cod taken on the United States coasts, in Spring and Fall, and on George's Shoals, the greater part of the 4,831,000 dollars worth of the cod tribe, which the tables put in by Prof. Baird show us to be the catch of last year of United States fishermen, must necessarily have been taken in British American waters, or off British American coasts, for there are no other waters in which Americans take this fish.

Turning now to the mackerel, we shall find that the same prevailing influence, namely that of temperature, actually defines the spawning area and limits the feeding grounds of this fish.

Colonel Benjamin F. Cook, Inspector of Customs, Gloucester, tells the commission that this very year, "In the spring, out South, there was a large amount of mackerel, and late this Fall, when we were coming from home recently, the mackerel had appeared in large quantities from Mount Desert down to Block Island; but during the middle of Summer they seem to have sunk or disappeared."—page 182.

In the portion of Professor Hind's testimony, just quoted, the cause of the mackerel seeking three or four points only on the United States Coasts to spawn in the Spring is given, which is, that there the Arctic Current impinges on the coast line. Cold water is then brought to the surface and as both the eggs of the cod and of the mackerel float, the low condition of temperature required is produced there by this northern current. This question of the floating of the eggs of the cod and of the mackerel is very important, for when the time of spawning is considered, it shows from the testimony of both witnesses that the coldest months in the year are selected by the cod in United States waters; and the mackerel spawn only when the Arctic Current or its offset ensure the requisite degree of cold. The same peculiarity according to Professor Baird, holds good with regard to the herring. This condition of extreme low temperature, necessary for the three commercial fishes, so limits the area of suitable waters off the coast of the United States, that the American fishermen are compelled to come to British American coasts for their supply of these fish, whether for food or for bait.

All the American witnesses concur in the statement that the codfishery is the most profitable, and there is an equal concurrence of statement that the codfishery is erroneously styled an off-shore, or so called deep sea fishery.

I call attention to the codfishery, as pursued by the great Jersey houses, wholly in small open boats, and almost always within three miles from the shore; to the codfishery pursued on the Labrador Coast, wholly inshore; on the whole extent of Newfoundland, except a small portion of the western coast also wholly inshore; to the codfisheries pursued in the deep bays and among the Islands of Nova Scotia, on the north shore of the St. Lawrence, on the northern coast of Cape Breton quite close to the shore.

That leads me, by a natural connection, to banks and shoals, for it has been shown that these bring the cold water of the Arctic current to the surface, by obstructing its passage. The underlying cold current rises over the banks and pushes the warmer water on each side. All our testimony goes to prove that the mackerel are almost altogether taken on shores, banks and shoals, where the water is cold. An off-shore bank is a submarine elevation,—a hill top in the sea,—and the temperature here is cold, because the Arctic current or cold underlying strata of water rises over the banks with the daily flow of the tides. (Professor Hind's paper, p. 97.) This is the fisherman's ground, both for cod at some seasons and for mackerel at all seasons. But what of a shelving or sloping coast two or three miles out to sea, exposed to the full sweep of the tides? Is not that also practically one side of a bank, over which the flood tide brings the cold underlying waters, and mixes them with the warm surface waters, producing in such localities the required temperature? Looking at the chart of Prince Edward Island, the Magdalen Islands and the estuary of the St. Lawrence, there is no part of the Magdalen Islands, where the Americans fish within the three-mile limits, where the water is so deep as within the three-mile limit on Prince Edward Island, east of Rustico, and covering fully one-half the mackerel ground there. The depth of water between two and three miles from the coast is shown on the Admiralty chart, to vary there from 9 to 13 fathoms within those limits, or 54 and 78 feet,—enough to float the largest man-of-war and leave 25 to 40 feet beneath her keel. It will be remembered that in one of the extracts I have read the depth of water where fish are taken, is given at from five to eight fathoms. And yet, we have been constantly assured that there is not water enough for inshore mackerel fishing in vessels drawing 13 feet water at the utmost! Besides all this, we have the testimony so frequently advanced from fishermen on the shores of Prince Edward Island, that the American fishermen were a source of alarm and injury to them, on account of their lee-bowing their boats. This proves two important facts,—first, that the American fishermen did and do constantly come within the three-mile limit to fish for mackerel, and they come in with their vessels, because the fish is there.

Having given the reason why these cold water species of fish, according to a law of nature, must be found quite close in shore, I will now proceed to show that the facts put in evidence fully sustain science.

I shall first direct the attention of your Honors to the special facts connected with the fishing operations pursued on the coasts of the estuary of the St. Lawrence and the Gulf of St. Lawrence, from Cape Chatte to Gaspé, and Cape Despair, on the south side, and from Point des Monts, on the north side of the estuary, to Seven Islands, thence to Mingan, thence to Natashquan, an immense stretch of coast line.

The witnesses from the Province of Quebec have more to say about cod, bait, halibut and herring, than about mackerel.

Mr. P. T. Lamontaigne testifies in reply to Mr. Thomson as follows:—

"Q. Take from Cape Chatte to Gaspé, along the south shore, what is the average annual export each year of fish; I refer to codfish and herring? A. From my place down to Cape Gaspé there will be 25,000 quintals at least of dried fish exported.

"Q. Taking the whole Gaspé shore, what would you say? A. I should think not less than from 180,000 to 200,000 quintals of dried fish.

"Q. What is the value per quintal previous to exportation? A. They should not be worth less than \$5 per quintal.

"Q. How are these fish taken, by vessels or by boats? A. By boats.

"Q. Are they taken with hook and line? A. Yes. What we take on our coasts are all taken with boats and with hook and line.

"Q. Have you any halibut on your coast? A. Not at present.

"Q. What is the reason? A. We attribute it to the Americans fishing for halibut on our coast.

"Q. What time do they fish? A. About August.

"Q. What years did they come there? A. From 1856 to 1866 and 1870, as near as I can remember.

"Q. In 1866 the Reciprocity Treaty came to an end: did the Americans fish for halibut there in 1870? A. I could not say exactly the year, but I am sure they fished there.

"Q. Did they fish after the abrogation of the Reciprocity Treaty in 1866? A. The Americans did fish there.

"Q. Was halibut taken within two miles of the shore? A. Near the shore.

"Q. The Americans came in after the Reciprocity Treaty was abrogated did they? A. I believe they did.

"Q. And they cleaned out the halibut? A. Fishermen all agree in saying that they took away all the halibut on our coast."

While we are speaking of the halibut, I must remind the members of the Commission of the strenuous efforts made by the American counsel and witnesses to impress them with the notion that halibut was extinct all over the Bay of St. Lawrence, and that the Americans never fished for codfish in the Gulf anywhere. We are not left here to select between conflicting testimony. I have judicial authority to strengthen our assertions. I will extract from a report filed in the case, four seizures of vessels caught in the act of fishing halibut and cod within the three mile limit.

Lizzie A. Tarr, 63 tons, Messrs. Tarr Bros. owners, Gloucester, Mass., U. S., seized 27th Aug., 1870, by N. Lavoie, schooner *La Canadienne*, about 350 yards from the shore in St. Margaret's Bay, North shore of Gulf of St. Lawrence, Province of Quebec. Anchored at West Point of St. Margaret's Bay, near Seven Islands, St. Lawrence coast, West of Mount Joly, about 350 yards from the shore. Five fishing boats were alongside the vessel, crew having just returned from tending their lines, which were set between the vessel and the main land. Six halibuts were found on the lines. Master admitted that the owner of vessel had directed him to go and fish there, as the divergent cutter was sold on soon in these places, and some of the crew stated that if they had good spy-glass they would not have been caught. Tried in Vice-Admiralty Court at Quebec. Vessel condemned. Defended. Sold for \$2,201; money paid to credit of Receiver-General, after deducting costs and charges.

Samuel Gilbert, 51 tons, Richard Hanan, master, Gloucester, Mass., U. S., seized 24th July, 1871, by N. Lavoie, schooner *La Canadienne*, about two miles N.W. by W. from Perrequet Island, near Mingan, on the North Coast of the Gulf of St. Lawrence. At the time of capture, schooner was taking fresh codfish on board from one of her flats alongside. Two of her boats were actively fishing at a distance of 450 yards from shore, and men on board were in the act of hauling in their lines with fish caught on their hooks. When seized, boats were half-full of freshly caught cod fish, and had also on board fishing gear used for cod fishing. Owner admitted having fished, but pleaded as an excuse that he was under the impression that the provisions of the Washington Treaty were in operation. Tried in the Admiralty Court at Quebec. Vessel condemned. Vessel released for costs.

Enola C., 66 tons, Richd. Cunningham, master, Gloucester, Mass., U. S., seized 20th May, 1872, by L. H. Lachance, schooner *Stella Maria*, less than two miles from the shore in Trinity Bay, North Shore of Gulf of St. Lawrence, Province of Quebec. Actively fishing at time of capture; had been fishing all day with trawl nets set from 50 to 600 yards from shore, and extending 5 or 6 miles along the coast, between Point des Monts and Trinity Bay. When captured, vessel was becalmed inside of two miles of Trinity Bay, had on deck two fresh caught halibuts, and two of her men were at the time engaged raising trawls set close in Trinity Bay. On their coming alongside of vessel, it was ascertained they had two halibuts in their boat. Master admitted having committed the offence, but begged hard to be let off, on account of this being his first offence. Had been warned, before coming to Trinity Bay, not to fish within limits. At time of seizure vessel had on board a cargo of about 2,000 lbs of halibut and salt. Sureties discharged.

James Bliss, 62 tons, Allan McFarlane, master, Gloucester, Mass., U. S., seized 18th June, 1872, by L. H. Lachance, schooner *Stella Maria*, within 1½ miles of the East end of Anticosti Island, in the Gulf of St. Lawrence, Province of Quebec. At time of capture was anchored within 1½ miles from the shore, between Point Cormorant and the East end of Anticosti Island. Actively fishing for halibut with five trawl nets set on and the vessel, between 70 yards and 1½ miles from the shore, and had been fishing there for three days previous. Master acknowledged the offence, and stated that he had been warned by his owners not to expose their vessel. Sureties discharged.

Dr. Pierre Fortin, M. P. P., testified before the Commission as to the large number of British establishments engaged in the codfisheries on the south shore of the River St. Lawrence, to the head of Baie des Chaleurs, and on the north shore of the River and Gulf of St. Lawrence. Dr. Fortin, examined by myself, testified as follows:—

"Q. All those establishments deal exclusively in cod? A. Yes, their principal business is codfish. Sometimes herring and mackerel are dealt in, but not much. The principal is codfish.

"Q. Do any of those establishments resort to Newfoundland for cod? A. No. Not at all; never.

"Q. Well, where is all their cod caught? A. On the shore and from boats.

"Q. Is all the cod they deal in caught in Quebec waters? A. Yes.

"Q. With boats? A. Yes, and they fish from the shore.

"Q. What kind of boats? Open boats? A. Fishing boats manned by two men.

"Q. Name the Banks and their extent, which exists in these waters? A. On the north shore I know of only two Banks of small extent. St. John or Mingan and Natashquan.

"Q. St. John and Mingan are the same thing? A. Yes, the same bank. Six or seven miles from the shore.

"Q. Of what length is it? A. They lie six or seven miles from the shore, but they merge into the shoal fisheries. They are not distinct from the shoal fisheries. They are seven or eight miles in length.

"Q. What is the length of the Natashquan? A. It is about ten miles in length. These are all the banks on the north side.

"Q. Now, on the south side? A. Well, from Matane to Cape Gaspe, in what is called the River St. Lawrence, there are no banks. The fishing is all carried on within three miles, and sometimes within two miles. Then there are two banks opposite the shore of Gaspe and Bay Chaleur. There is a bank called Point St. Peter's Bank, which is very small, ten miles out. It is a very small bank, three or four miles in extent. Then there is Bank Miscon, or Orphan, a bank lying off the coast of Miscon; also off the coast of Gaspe or Bay Chaleur, a distance of about twenty miles—fifteen or twenty miles.

"Q. Now, taking into account these banks, could you state how far from the shore, or, rather, could you state what proportion of the whole quantity of cod taken is caught within three miles? A. Taking into account that only our people that are settled in St. John's River, and a place called Long Point, visit the Mingan or St. John Bank, also that but few fishermen from Natashquan go on the bank, that is of our own fishermen, and taking into account that our fishermen generally go on the bank only in two or three places, I should think that more than three-fourths,—I should say eighty per cent., or up to eighty-five per cent. of the codfish taken by Canadian fishermen are taken inside of British waters."

As to bait for the halibut fishery, Mr. Fortin said:—

"Q. What is the bait used for halibut? A. Herring and codfish. Codfish is as good as any. It is firmer than herring, and holds well on the hook. They put a large bait on, so that the small codfish cannot take the bait, because the object of the halibut fishers is to take nothing but halibut. When they take codfish, they have to throw it overboard.

"Q. And as codfish, as well as herring, are taken inshore, they have to come inshore? A. Yes, they come in close to the shore for halibut."

And, with respect to codfish, Dr. Fortin continues:—

"Q. Well, what bait is used for codfish? A. The bait they use are caplin, launce, herring, mackerel, smelt, squid, clam, trout, and chub.

"Q. Where do they generally keep? A. Near the shore. The caplin and launce fish are on the shore, rolling on the beach sometimes, and our fishermen catch many of those with dip-nets, without using seines. Herring are caught also near the shore with nets.

"Q. Well, can the codfishery be carried on advantageously otherwise than with fresh bait? A. No, no. Salt bait is used sometimes, when no other can be had, but it cannot be used profitably.

"Q. Is there any means of keeping bait fresh for some time? A. Well, some of our large establishments which have ice-houses have tried to keep the bait they use in a fresh state as long as they could, but they have not succeeded well. They may from half a day to a day in warm weather, perhaps.

"Q. With ice? A. Yes, because the herring, for instance, may be fit to eat, but not for bait.

"Q. Why? A. Because the bait they use must be fresh enough to stick on the hook. If it is not very fresh it does not stick on, and it will not catch the codfish, because the codfish will take the bait off the hook, and leave the hook.

"Q. You say it can only be kept half a day, or a day? A. It may be kept, perhaps, a day or two. It depends upon the weather.

"Q. Well, would it be possible for the Americans coming there to fish for cod to bring their bait with them in a fresh state? A. No, it is impossible.

"Q. They could only bring salt bait, which is not much used? A. That is all."

Mr. John Short, M. P., for Gaspe, examined by Mr. Davies, gave evidence as follows:—

"Q. Can you give the Commission an estimate of the quantity of fish taken by our fishermen annually along the coast? A. From Mount Cape Chatte to New Richmond the catch would be about 100,000 quintals.

"Q. Where is New Richmond? A. On Bay Chaleurs. There is Anticosti and the north shore of the St. Lawrence, from Joli north-westward, which will give 100,000 quintals, making together 200,000 quintals.

"Q. The north shore of the St. Lawrence and Anticosti will give 100,000 quintals? A. Yes, with the Magdalen Islands.

"Q. What kind of fish is taken? A. Codfish chiefly; herring is the next catch in quantity and importance.

"Q. You don't fish mackerel to any extent? A. No.

"Q. You don't go into it for the purpose of trade? A. No; we find the codfish more remunerative.

"Q. What is the value of those 200,000 quintals of fish? A. The coast value is about \$5 per quintal, which would give a value of \$1,000,000. The market value is higher; it ranges from \$5 to \$8 per quintal.

"Q. How far are those fish taken from shore by the fishermen, take the north shore? A. Principally, and nearly altogether inshore.

"Q. Now take the south shore? A. From Cape Chatte to Cape Gaspe they are all taken inshore, and from Cape Gaspe to New Richmond the greater portion is taken inshore, some are taken on Banks.

"Q. Where do the American cod-fishermen get their bait? A. They get a great quantity from the inshore fishery.

"Q. Have you seen them catch bait? A. I have seen them set nets, but not take them up.

"Q. Have you any doubt that they do catch bait? A. I have not. They often draw seines to shore for caplin and small bait.

"Q. Could the Americans carry on the deep sea cod-fishery without that bait? A. Not with success.

"Q. You are quite sure about that? A. Yes; I have no hesitation in saying it could not be carried on."

Mr. Josef O. Sirois, tells the Commission in his examination by myself:—

"I am a merchant at Grande Riviere, County of Gaspe. I have employed men to fish for me round my neighborhood. I have fished on the south side of the River St. Lawrence, from Paspébiac to Cape Gaspe, a distance of about 90 miles. My fishing was done with small boats, each having two men; I generally have six of such boats employed fishing. I have carried on this kind of business during the last twenty years. It is cod we take on that coast. Cod is slightly more abundant than it was 20 years ago; it may be that each boat takes less, but the number of boats has considerably increased during that period. Part of the cod is taken along the coast, and the remainder on Miscou Bank. Cod is taken from one to two miles from the coast. They take about half their catch on herring, squid, smelt, and mackerel. The bait is obtained at from a quarter of a mile to two miles from the coast; it is very rare the fishermen would have to go out as far as three miles to take bait. American fishermen could not bring fresh bait from their homes. It cannot be kept with ice to be used advantageously for more than two days. The effect of placing bait on ice is to soften it so that it will not hold on the hooks. I have seen a number of American schooners fishing mackerel on the coast."

Mr. Louis Roy, of Cape Chatte, testified to the Commission, in reply to myself, as follows:—

"Q. What part of the coast of the river St. Lawrence are you acquainted with? A. From Cape Chatte to Cape Gaspe.

"Q. What is the distance between those points? A. About 140 miles.

"Q. That is on the South Coast? A. Yes.

"Q. Do you know anything of the North Coast? A. I have some knowledge of the North Coast, but am not so familiar with it as with the South Coast.

"Q. What extent of coast on the North side do you know? A. About 160.

"Q. That would make a length of three hundred miles of the river coast, that you are acquainted with? A. Yes.

"Q. Is it to your knowledge that the Americans have been fishing on that part of the river St. Lawrence? A. Oh, yes; they have fished near my place very often.

"Q. When did they begin to fish on that part of the river? A. About 1854.

"Q. The time of the Reciprocity Treaty? A. Yes.

"Q. Until then you had never seen much of them? A. Oh, yes. I saw many during the ten years previous to that.

"Q. But they came in large numbers after that date? A. Yes; they came in large numbers for about six or seven years.

But after that they came in less numbers.

"Q. You mean during the last years? A. Yes.

"Q. At the time they were frequenting that part of the river, how many sail have you any knowledge of as visiting the coast? A. From Cape Gaspe to Cape Chatte?

"Q. Yes, and on the north shore also? A. About 250 or 300 sails.

"Q. Schooners? A. Yes.

"Q. What was the general tonnage? A. About 70 or 80 tons.

"Q. That is the average? A. Yes; there would be some 50 tons and some 120.

"Q. You say that many visited during one season? A. From Spring to Fall. Oh, yes.

"Q. After the Treaty of Reciprocity? A. Not so much.

"Q. You mean not so much after the Treaty was terminated? A. Yes.

"Q. But during its existence? A. Well, about the number I have stated.

"Q. Were they fishing for fish to trade with? A. Yes.

"Q. What kind of fish was it? A. Cod.

"Q. Where was the cod caught? A. Do you mean what distance from the shore?

"Q. Yes? A. Within three miles.

"Q. Well, out of these 300 miles you have spoken of, where could cod be fished for out off the coast? A. Well, for about 15 or 20 miles off the north shore. On the south shore there are none at all outside. You can't catch off beyond three miles on the south shore.

"Q. Where are those 15 or 20 miles? A. From Mingan.

"Q. Have you any knowledge of the catch that one of those schooners would take, neither the largest nor the smallest. Take an average? A. About between 500 or 600 barrels, each vessel.

"Q. For the whole season? A. Yes; because some of them made two trips and some three.

"Q. Well, then they would not take 500 or 600 barrels each trip? A. No, no; I mean for the whole season.

"Q. Is the cod as abundant now as it was 30 or 40 years ago? Do you get as much? A. Oh, yes, as much as 30 or 40 years ago. I am sure of it.

"Q. Have you any idea what quantity of fish is taken by the Canadians in that part of the river? A. Oh, yes; I have a memorandum here. I calculate that the catch of codfish from Cape Chatte to Cape Gaspe, along the coast, is about 220,000 quintals of dry fish, valued at \$4.50 a quintal.

"Q. Do you know if much of that is exported to the United States? A. Not at all; not any.

"Q. Now, as to the mackerel, is that a fish for which the Americans were fishing on that part of the river? A. Yes.

"Q. Where is the mackerel taken generally? A. It is within three miles, because always the fat mackerel is inside of a mile, — close by.

"Q. Well, from the knowledge you have of the locality, do you think you would see any American schooners if they were prevented from fishing within three miles of the shore? A. No.

"Q. Would it be profitable for them? A. They cannot do it. They would not come because they would not catch enough to pay expenses."

Mr. James Jessop, of Gaspe, examined by Mr. Weatherbe, testifies as follows:—

"Q. As a matter of fact, where do they get most of the bait, on the shores or on the Banks? A. More inshore than on the Banks.

"Q. Do the Americans come inshore constantly for bait? A. They may not come on our shores, but on other shores they do. Most of them go to Shippegan, which is a great place for fishing herring. The herring come in from the Banks of Shippegan: the Americans catch them and also follow them inshore.

"Q. The Americans come from the Banks on purpose to catch bait? A. Yes, and when they go out of the Bay they get fresh bait when the herring school is passing out.

- "Q. How long does fresh bait last? A. It will only keep fresh one day.
- "Q. That is when there is no ice on board to preserve it? A. Yes.
- "Q. Where there is ice, how long will the bait keep fresh? A. Two or three days.
- "Q. From Cape Chatte to Cape Gaspe, how far from the shore did the Americans fish? A. From Cape Chatte to Cape Gaspe the Americans came in along the shore. I never fished there. I have passed up and down and seen American vessels fishing for mackerel right along the shore.
- "Q. Did you see or hear of Americans fishing for mackerel outside of three miles from shore? A. No; all within one mile, one mile and a half and two miles of the shore.
- "Q. Did you ever hear of any fishing outside three miles? A. Not on that coast.
- "Q. On the North side of Bay Chaleurs where are mackerel found? A. The great body of mackerel is along the shore. A few may be caught outside in deep water, but the mackerel make into the shore and come after small bait.
- "Q. Where are most of the mackerel caught? A. Handy to the shore, sometimes a mile and a half out. Sometimes not five acres out.
- "Q. Do you know from the Americans themselves whether they catch the greater part of the mackerel inshore? A. Yes. The vessel I was on board fished inshore with boats. The vessel was at anchor in Newport harbor.
- "Q. How far from the land? A. About 300 yards.
- "Q. Did you catch all the fish there? A. There were no fish in the harbor. We caught them in a cove called Carnaval.
- "Q. How far from the shore? A. About two cables length. We got 100 barrels one day.
- "Q. Did you catch your fish far from the shore? A. The farthest we caught might be half a mile off.
- "Q. How many did you catch? A. I could not say exactly, but we pretty nearly loaded her. I left her, and she afterwards left to trans-ship her cargo.
- "Q. Do the Americans fish along your shores for cod? A. They do.
- "Q. Within three miles from shore? A. Yes.
- "Q. To any extent? A. They don't fish codfish to any great extent within three miles from shore.
- "Q. Where do they fish for cod? A. On Miscou Bank and Bank Orphan.
- "Q. What is the number of the fleet engaged in fishing on Miscou Bank alone? A. I have heard my men say from 40 to 50 sail.
- "Q. You would put the average at 40 sail? A. Yes.
- "Q. Do you know what is the number of the cod fishing fleet in the Bay on an average each year? A. From 300 to 400 vessels.
- "Q. Nearer 400 than 300? A. About 400.
- "Q. Where do these cod fishermen get the bait they use? A. A great deal of it inshore, along our coast.
- "Q. How do they get it? A. By setting nets inshore, and sometimes by buying it.
- "Q. What kind of fish do they catch for bait? A. Herring. I have seen them seining herring. I have heard that they jig squid and bob mackerel.
- "Q. They catch caplin? A. Yes.

Mr. Joseph Couteau of Cape Despair, examined by myself, gives the following evidence:—

"I am 42 years of age. I live at Cape Despair, in the County of Gaspé. I am a fisherman, and at present employ men in the fishing business. This fishery is carried on along the coast from one to three miles from the shore, and also on Miscou Bank. The Americans fish there. I have seen as many as 40 sail fishing there at the same time. The Americans procure their bait along and near the coast. The bait consists of herring, caplin and squid. The cod fishery cannot be prosecuted to advantage with salt bait. The Americans cannot bring with them to Miscou Bank a sufficient supply of bait. In 1857 I fished in an American schooner called the 'Maria.' I do not remember her captain's name. The schooner was fitted out at and started from Portland. During the first three months of the voyage, we fished for cod along Cape Breton, the Magdalen Islands and Miscou Bank. At Cape Breton we took the cod at distances of from a mile to a mile and a half from the shore. We fished at about the same distance from the shore at the Magdalen Islands. We took 350 quintals of cod. We caught about three-quarters of our load within three miles of the coast off Cape Breton and the Magdalen Island and the remainder at Miscou Bank. We procured our bait on the Cape Breton shore."

Mr. Abraham Lebrun, of Pécé, examined by Mr. Weatherbe, tells the Commission, where the Americans procure their bait:—

- "Q. Where do they procure their bait? A. The generality of them procure it on the coast.
- "Q. How do they get it? A. In nets. They take herring in nets.
- "Q. And what else? A. Squid; they also seine caplin on our coast.
- "Q. Where do they get their nets with which they catch it? A. They bring them with them.
- "Q. Where did they get the bait after the abrogation of the Reciprocity Treaty? A. They run the risk of capture to obtain it within three mile limit.
- "Q. Year after year? A. Yes.
- "Q. How do you know that? A. I have seen them do so."

The witness is then asked about halibut:—

- "Q. Halibut are caught along the North shore of the River St. Lawrence for the distance of 180 miles, to which you have referred? A. Yes.
- "Q. And they are taken on the coast of Anticosti, and along the south coast, and along the other coasts, on the south side of the St. Lawrence, which you have mentioned? A. Yes, sir, from Cape Chatte to Cape Gaspe; this is a celebrated coast for halibut.
- "Q. Are halibut caught on the shores of Gaspé and the Bay of Chaleurs? A. They are, or have been, caught there.
- "Q. By whom is the halibut fishery carried on? A. Chiefly by the Americans.
- "Q. And how are they caught? A. With trawls.
- "Q. What effect has their mode of fishing had on the coast as a halibut fishery ground? A. With regard to halibut, it has injured the fishery.
- "Q. By what means? A. By over-fishing. Halibut is a fish which does not reproduce itself like the cod, and of course the fishing is thus affected and injured.
- "Q. By whom has this over-fishing been done? A. By the Americans.
- "Q. During how many years? A. It has been the case as long as I can remember,—that is, from 1856 to the time when I left the north shore, in 1873. They have frequented the coast from year to year.
- "Q. Is the halibut fishery carried on now on the south shore? A. At present, halibut are very scarce there; but formerly they were very plentiful on this coast."

Mr. John Holliday, who pursues the fishing business on an extensive scale at the mouth of the Moisie River, testified, in his examination by Mr. Thomson, as follows:—

- "Q. Well, do you take no halibut or hake? A. We take a few halibut, not of any great moment, this year past.
- "Q. Why is that? It used to be plenty? A. They used to be, but since 1868 or 1869 the coast is nearly cleaned of halibut by the American fishermen coming there. Two of them were taken in my neighborhood; that is, two of their vessels were taken by the cruisers.
- "Q. What became of them? A. I think they were both condemned.
- "Q. Well, were those halibut taken within three miles of the shore? A. Oh, yes, within about a mile and a half of the shore.
- "Q. There was no doubt, then, about the fact of the infringement of the law, for which those vessels were taken? A. I have seen several of them leave the coast and leave their lines. When they saw the cruisers come they stood out to sea and came back a day or two afterward and picked up their lines.

- "Q. That was within three miles? A. Yes.
- "Q. How near? A. About a mile and a half.
- "Q. I do not know whether the atmosphere there is of that peculiar character that a vessel within half a mile will think she is three miles out? A. They could not well think that.
- "Q. You can generally tell when you are within three miles? A. Yes; at all events within a mile and a half.
- "Q. Well, you say that in 1868 and 1869 the American schooners came there and fished out the halibut? A. Yes, they cleaned them out.
- "Q. What kind of fishing was it? A. With long lines or trawls.
- "Q. There were a great many hooks upon them? A. A great number; there were several miles of them.
- "Q. What was the effect of that, either to your own knowledge or from what you have heard? A. The whole of our inshore fishermen fished codfish and halibut. We get none now, or next to none.
- "Q. No halibut, you mean? A. No halibut.
- "Q. Are they a fish that keep pretty close to the bottom as a rule? A. Yes.
- "Q. Therefore they are the more liable to be taken up by the trawl? A. That is the method adopted in this country of catching them altogether.
- "Q. Before the Americans came with a trawl, how did your people take them? A. With hand lines.
- "Q. Were they reasonably plenty in those days? A. Yes; a boat has got from eight to ten. Now they very seldom get any.
- "Q. Well, had the hand-line fishing been continued and those trawls not introduced, is it or is it not your opinion that the halibut would be now there just as it used to be? A. I think it would be as good as previously.
- "Q. In your opinion then this trawl fishing is simply destructive? A. To halibut."

SATURDAY, 17th November, 1877.

The Conference met.

MR. DOCTRÉ continued his argument in support of the case of Her Majesty's Government, as follows:—

May it please your Excellency and your Honors:—

When we separated yesterday, I demanded and obtained an adjournment until Monday, as I considered I required that time to lay before the Commission the matter in issue, in its different aspects; and I am still of opinion that I would have fulfilled my duty in a more complete manner, if the arrangement of yesterday had been adhered to. However, a very pressing demand was made upon me to meet this afternoon, in order to close my part of the argument, and leave the way free and clear for my successor on Monday. With a strong desire to comply with the demand from gentlemen with whom I have been acting so cordially so far, and with whom I hope to act cordially up to the time of our separation, I made an effort to be able to present myself before the Commission at this hour. However, I shall have to deal, I fear, in a very ineffectual manner, with the matters that remain to be considered. I have taken particular care in arranging the evidence and argument, not entirely for the reason that your Honors required any information from me to form your opinion; I think after this long investigation the minds of your Honors must be pretty well made up, and could not be much altered and influenced by any remarks I could offer. But we must not forget that this Treaty is a temporary arrangement, which will be the object of fresh negotiations within a pretty short period, and I considered that those who will have to deal with the question five, six or eight years hence, will be unable readily to discover, in this mass of evidence, what part has a bearing upon one branch of the case, and what part upon another branch; and I thought it would be useful if not for the present moment, for the future, to make a complete investigation of the evidence, and to place it in such a shape that those who shall succeed your Honors in dealing with this question, may be guided in some way through these fields of testimony. When we adjourned yesterday, I was showing at what distance, from the shore, the codfishery in the estuary of the St. Lawrence is prosecuted. Before proceeding to another part of the evidence, I desire to draw the attention of your Honors to what has fallen from the learned counsel on behalf of the United States, Mr. Foster and Mr. Trevelyan.

Mr. Trevelyan admits that the British case can be supported by proof of *the habit of United States fishermen.*

"If fifty fishermen of a fishing fleet swore that it was the habit of the fleet to fish inshore and fifty swore that it was the habit never to fish inshore, you might not know which to believe; but supposing, what in this case will not be disputed, that the witnesses were of equal veracity, you would certainly know that you had not proved the habit."

"You will see, therefore, that the burden of proof is on our friends. They must prove their catch equal in value to the sword."

they claim. If they cannot do that and undertake to prove habit, then they must do,—what they have not done,—prove it by an overwhelming majority of witnesses. With equal testimony their proof fails."

There is an enormous quantity of testimony produced, on the part of Her Majesty's Government, to show that the United States fishing fleet constantly, throughout the season, fished within three miles of almost all the shores of the Gulf of St. Lawrence,—on the shores of Nova Scotia, (including all the shores of Cape Breton,) the shores of Prince Edward Island, the west shore of the Gulf, the shores of Bay de Chaleur and Gaspé, both shores of the River St. Lawrence, and the whole north shore to Labrador, the shores of Anticosti, as well as the shores of the Bay of Fundy. The various fleets of United States vessels were very seldom if ever, during the fishing season, out of sight of very large numbers of respectable and intelligent witnesses residing on various parts of the coast, whose sworn evidence has been received by the Commission. Besides, witnesses—too numerous to mention—have given evidence sufficient literally to fill a volume, of having fished in American bottoms; and they testify that the common custom of the various fleets was to fish within three miles of all the shores thrown open by the Treaty of Washington.

In addition to this, a very large number of witnesses have corroborated the views of almost all United States writers and statesmen who have offered the opinion that without the "three mile belt" the Gulf Fishery is useless,—and these latter witnesses, who have been interrogated on the subject, have, without perhaps a single exception, stated that the American shippers and fishermen have invariably admitted that, without the free use and enjoyment of the three mile inshore fisheries, they considered it useless to enter the Bay of St. Lawrence for fishing purposes. Can there be stronger proof of habit? Speaking of the British testimony, says the learned counsel, Mr. Trescot:—"With equal testimony, their proof fails." Perhaps so. Has "equal testimony" been produced by the United States? Is there any testimony whatever to contradict this immense mass of evidence of the "habit" of the United States fishing fleet?

Numbers of fishermen were produced by the United States to show that they themselves had fished at Banks, Bradley and Orphan, and other banks and shoals, and at the Magdalen Islands, outside of British waters, who, by the way, nearly all suffered loss, but scarcely any of these witnesses undertook to show where the fleet fished. On the contrary, they almost invariably qualified their statements by showing that they spoke only of their own individual fishing.

The learned counsel for the United States implicitly admits that unless there has been produced witnesses contradicting the British evidence as to "habit," the British case is made out. There is a singular absence in the vast number of witnesses and affidavits produced on both sides, for twelve weeks,—there is a singular and marked absence of contradiction, and upon the principle involving "habit," enunciated by Mr. Trescot, the evidence can be relied on with confidence as fully and completely establishing the claim.

The learned agent, Mr. Foster, in his very able speech, contends that the British claim is not made out because there are but a trifling quantity of fish caught by United States vessels within the formerly prohibited limits; but it can be clearly shown that he is entirely mistaken as to the weight and character of the evidence. He says:—

"If the three mile limit off the bend of Prince Edward Island, and down by Margaree, where our fishermen sometimes fish a week or two in the autumn (and those are the two points to which almost all the evidence of inshore fishing in this case relates), if the three mile limit had been buoyed out in those places, and our people could have fished where they had a right to, under the law of nations and the terms of the Treaty, nobody would have heard any complaint."

Again:—

"Almost all the evidence in this case of fishing within three miles of the shore relates to the Bend of Prince Edward Island and to the vicinity of Margaree. As to the bend of the Island it appears in the first place that many of our fishermen regard it as a dangerous place, and shut it out on that account, not daring to come as near the shore as within three miles, because in case of a gale blowing on shore their vessels would be likely to be wrecked."

He also says:

"There is something peculiar about this Prince Edward Island fishery, and its relative proportion to the Nova Scotia fishery. As I said before, I am inclined to believe that the greatest proportion of mackerel caught anywhere inshore, are caught off Margaree late in the autumn. The United States vessels, on their homeward voyage, make harbor at Port Hood, and lie there one or two weeks; while there they do fish within three miles of Margaree Island; not between Margaree Island and the main land, but within three miles of the island shores; and just there is found water deep enough for vessel-fishing. Look at the chart, which fully explains this fact to my mind. Margaree is a part of Nova Scotia, and Prof. Hind says there is an immense boat-catch all along the outer coast of Nova Scotia, and estimates that of the mackerel catch, Quebec furnishes seven per cent., (he does not say where it comes from), Nova Scotia, 80 per cent., New Brunswick 3 per cent., and Prince Edward Island 10 per cent."

This is also from the learned Agent of the United States:—

"When I called Prof. Hind's attention to that, and remarked to him that I had not heard much about the places where mackerel were caught in Nova Scotia, he said it was because there was an immense boat catch on the coast. If there has been any evidence of United States vessels fishing for mackerel within three miles of the shores, or more than three miles from the shore of the outer coast of Nova Scotia, it has escaped my attention. I call my friends' attention to that point. If there is any considerable evidence, I do not know but I might say any appreciable evidence of United States vessels fishing for mackerel off the coast of Nova Scotia, (I do not now speaking of Margaree, but the coast of Nova Scotia), it has escaped my attention. As to Cape Breton, very little evidence has been given, except in reference to the waters in the neighborhood of Port Hood."

Providing Mr. Foster were correct in the view he has put forward of the evidence, he might with some reason urge the Commission to refuse the award claimed on behalf of Her Majesty's Government.

Nothing could be more unjust and unfair to the character of the Canadian Fisheries, than to adopt the statement of the learned Agent as to P. E. Island and Margaree as the correct result of the facts established by absolutely uncontradicted evidence now before the Commission.

It is true that the main efforts of United States Counsel were exerted to impeach the large array of respectable witnesses who testified to the great wealth of the fishery in the Bend of Prince Edward Island, and the constant use of those grounds by United States fleets. But if Mr. Foster should ever again have occasion closely to examine the whole evidence given in this case on both sides, he will find that, beyond the efforts to depreciate that tract of water between the North Cape and the East Point, and that at Grand Manan, there is scarcely a line of testimony offered by him or his learned associates to shake or contradict the evidence given respecting all the other vast and rich Canadian fishing grounds. The evidence of the value to and use by American fishermen of all the coasts of Nova Scotia from the Bay of Fundy eastward, all around the Island of Cape Breton, the north shores of the coasts and bays of New Brunswick to Gaspé, and the entire coasts of Quebec, within the jurisdiction of the Commission, is almost, if not absolutely, uncontradicted.

This applies as well to the affidavits as to the oral testimony, and it may be stated here of the British affidavits, what cannot be said of those of the United States, that they are strikingly corroborated by the testimony of witnesses both on the direct as well as the cross-examination.

I here produce a number of extracts and references, which are more than sufficient to convince even our learned

friends on the other side, that they have taken only a very partial view of this case. And I call Mr. Foster's especial attention to these witnesses. At the risk of being considered tedious I cite this evidence, because the statement of my learned friend was emphatic, and he threw out a special challenge in asserting that there was but little evidence of fishing by Americans, except at the two places mentioned by him.

The pages refer to the British evidence :—

Page 79.—Mr. George Harbour, a resident of Sandy Beach, Gaspe, was called as a witness, and gave evidence, of the Americans fishing for mackerel in that locality. He says :—"They came in right to the shore, close to the rocks. Upon an average, they take 500 barrels in a season (two trips). He has never seen them fishing for mackerel outside three miles."

Page 88.—Mr. William S. Sinnett, a resident of Griffin's Cove, Gaspe, called as a witness, says :—"That he has seen Americans skippers fish two miles from the shore, and inside of a mile for mackerel; and that he has never seen them fishing outside of three miles. This witness speaks entirely with reference to his own locality."

Page 87.—Mr. George Grenier, of Newport, Gaspe, gave evidence that he "has seen American vessels fishing for mackerel 25 yards from the Point."

Page —. Hon. Thomas Savage, of Cape Cove, Gaspe, says, in his evidence, that "the fishing grounds extend from Cape Gaspe to Cape Chatte. As soon as the mackerel come in, the American fishermen take that fish, and the Gaspe fishermen cannot get bait."

Page 276.—Mr. James Joseph testifies that he has seen the Americans fishing from Cape Chatte to Gaspe, right along the shore, all within one or two miles from the shore.

Page 280.—Mr. Joseph Couteau, of Cape Despair, Gaspe, called as a witness, says that "The Americans fish along the coast of Gaspe, from one to three miles off shore."

These witnesses are confirmed and supported by—

Wm. McLeod, of Port Daniel, Gaspe.

Philip Vibert, of Perce, Gaspe.

James Baker, Cape Cove, "

Wm. Flynn, Perce, "

Abraham LeBrun, Perce, "

Louis Roy, " "

Page 180.—Mr. James McKay, Deputy Inspector of Fish, Port Mulgrave, after giving evidence of fishing close inshore off Cape Breton, in 1862, says : "In 1872, fished in American schooner *Colonel Cook*, and caught 400 barrels on second trip—three-fourths caught inshore. Caught 800 barrels of mackerel in two trips in 1872. In 1873, caught 360 blis. in two trips. The greatest portion of the fish were taken about Cape Low, Cape Breton, "close inshore."

Page 226.—Mr. John Stapleton, of Port Hawkesbury, C. B., says in his evidence that he has fished in American vessels "in Bay Chaleur, on the west coast of New Brunswick, to Escuminac and Point Miscou, from Point Miscou to Shippegan, and thence to Paspebiac and Port Daniel, down to Gaspe, round Bonaventure Island as far as Cape Rogers.

Page 243.—Mr. James Lord, of Deer Island, N. B., gives evidence that the Americans "take as much as the British fishermen on the mainland from Point Lepreaux, including West Isles, Campobello and Grand Manan."

Page 347.—Hon. Wm. Ross, Collector of Customs, at Halifax, formerly a resident of Cape Breton, and a member of the Privy Council of Canada, gives evidence as follows :—"The American fishermen fish for mackerel on the *Atlantic Coast* of Cape Breton, from Cape North to Scatterie, in August, September, and October, fishing inshore and offshore, but more inshore than offshore."

Page 374.—Mr. John McDonald, of East Point, P. E. Island, says, in his evidence, that he "has fished in American vessels about Cape Breton, P. E. Island, on West Shore, Bay of Chaleurs, and Gaspe, within three mile limit."

Similar evidence is given by—

Page 558.—John Dillon, Steep Creek, Gnt Canso.

Page 361.—Marshall Paquet, Souris, P. E. I.

Page 365.—Barnaby McIsaac, East Point, P. E. I.

Page 384.—John D. McDonald, Souris, P. E. I.

Page 388.—Peter S. Richardson, Chester, N. B.

Page 399.—Mr. Holland C. Payson, Fishery Overseer at Westport, N. S., says in his evidence that St. Mary's Bay, the coast around Digby Neck, with Briar Island and Long Island, are valuable fishing grounds. The Two Islands, in 1876, exported about \$200,000 worth of fish. This district is frequented by small American schooners, who fish for cod, halibut, pollock and herring.

Mr. Payson's evidence is corroborated that of Mr. B. H. Ruggles, of Briar Island, Digby, N. S.

Page 407.—Mr. John C. Cunningham, of Cape Sable Island, N. S., says in his evidence that United States fishermen take halibut off Shelburne County, within three miles of the shore, say $1\frac{1}{2}$ to 2 miles. A full fare is about 800 quintals,—take two fares in three months.

These witnesses were examined orally, and nearly all, if not all, ably cross-examined

The following are from the British affidavits, also to show the extent of coast used by United States fishermen:—

J. E. Marshall, fisherman, a native of Maine, was 10 years master U. S. fishing vessel:—

"1. The fishing by American schooners was very extensive from 1852 to '70. During that period the number of American vessels which have visited the shores of the Gulf of St. Lawrence, for fishing purposes, yearly, amounted from 300 to 500 sails. This I have seen with my own eyes. All these were mackerel fishing. The places where the Americans fished most during that period were on the shores of Cape Breton, Prince Edward Island, New Brunswick, and on the shores of Bay of Chaleur, from Port Daniel to Dalhousie, and east, from Port Daniel to Bonaventure Island, in Gaspe Bay, and on the south shore of Gaspe, from Cape Rosier to Miramichi, and on the North shore from Moisie to Gadabout River. I have fished myself nearly every year in these places, and I never missed my voyage."

Jas. A. Nickerson, Master Mariner, N. S.:—

"4. My best catches were taken off the north coast of Cape Breton, from Shittagan to Hanley Island, Port Hood, and I never caught any of the fish to speak of beyond three miles from the shore. I am certain, and positively swear that fully nine-tenths, and I believe more than that proportion of my entire catch was taken within three miles of the shore, the nearer to the shore I could get the better it would be for catching fish. One reason of that is that the mackerel keep close inshore to get the fishes they feed on, and these little fishes keep in the eddies of the tide quite close to the shore."

"5. These American fishermen get their catches in the same place we did. They took the fish close into the shore, that is by far the larger proportion of them, and the opinion among the American fishermen was universal, that if they were excluded from fishing within those three miles off the shore, they might as well at once abandon the fishery."

John L. Ingraham, Sydney, Cape Breton, Nova Scotia, fish merchant:—

"I have seen at one time two hundred American fishing vessels in this harbor. In the summer of eighteen hundred and seventy-six I have seen as many as thirty at one time."

"3. These vessels fish often within one-half mile of the coast, North and East of Cape Breton, and all round."

"21. American fishermen come around the southern and eastern coast of Cape Breton by dozens through the Canal and Bras D'Or Lake, and wherever it suits them."

Daniel McPhee, Fisherman, P. E. I.:—

1. "That I have personally been engaged in the mackerel and cod-fishing in the Gulf of St. Lawrence since the year 1863."

2. "That in the year 1863 I commenced mackerel fishing in the American vessel 'Messina,' and that during that year we fished in the Bay Chaleur, and took home with us six hundred barrels of mackerel during the fishing season of that year, one-third of which quantity, I would say, was caught within three miles of the shore."

10. "That about 200 of the American vessels get their bait on the Nova Scotian coast, and, in my opinion, without the bait obtained there they could not carry on the fishing."

11. "Then there is also a fleet of 40 American vessels which fish off Grand Manan. They average 350 barrels of herring per vessel, which are all caught close to the shore."

Chas. W. Dunn, Fisherman, P. E. I.:—

1. "That I have been engaged in fishing for about twenty-eight years, winter and summer, in both boats and vessels, having fished in the cod-fishing on the Banks for about seven winters. I have also fished mackerel in this Gulf with the Americans, from the summer of 1868 till 1871, and also in the halibut fishery on these coasts."

2. "At Anticosti we could often see the halibut on the bottom when we were trawling. This would be about two or three hundred yards from shore. I have seen ten thousand halibut a day caught at Anticosti, in water where we could see bottom. This halibut fishery is the best paying fishery that I have ever been in. I have made ninety dollars in twelve days as one of the hands at that fishery."

Jas. Houlette, Fisherman, P. E. I.:—

1. "That I have been engaged in fishing for fifteen years, in vessels belonging to the United States. I have fished all about Bay Chaleur, from Port Hood to Seven Islands, at the Magdalens, all along this Island coast, and two years' mackerel fishing on the American shores, and many winters cod-fishing."

John R. McDonald, Farmer and Fisherman, P. E. I.:—

13. "That almost all the American fishermen, fish close into the shore of the different provinces of the Dominion, and I do not think the Americans would find it worth while to fit out for the Gulf fishing if they could not fish near the shore. The year the cutters were about the Americans did not do very much, although they used to dodge the cutters and fish inshore."

Alphonso Gilman, fisherman, P. E. I.:—

7. "That when the mackerel first come into the Bay, they generally come up towards Bay Chaleur, Gaspe and round there,—passing the Magdalen Islands on their way. It is up there that the American fleet generally goes first to catch fish."

Joseph Campbell, P. E. I., master mariner, 9 years, U. S. vessels:—

2. "That from the year 1858 to 1867 I was constantly and actively engaged in fishing aboard American vessels, and during that time I fished on all the fishing grounds."

3. "We got our first fare generally in the Bay Chaleur. Fully nine-tenths of this fare would be caught close inshore, within the three-mile limit."

Alex. Chiverie, merchant, P. E. I., formerly fisherman; was 20 years in U. S. vessels. "We fished off the north part of Cape Breton, and caught the whole of our fare within three miles from the shore."

7. "That in the year 1867 I was master of a British fishing schooner. The first trip of that season we fished between the Miramichi and Bay Chaleur. During that trip the fish played chiefly inshore, about a mile from the shore. At times during that trip I would be getting a good catch, when the American vessels, to the number of fifty or sixty, would come along, and by drawing off the fish, spoil my fishing. During that trip, the Americans, I would say, caught fully three-fourths of their fare within the three-mile limit."

Nathaniel Jost, master mariner, Lunenburg, N. S.:—

2. "I have also seen many American mackerel-men engaged in taking mackerel around the coast of Cape Breton, Prince Edward Island, and eastern side of New Brunswick, and many of these fished inshore. I would say that there were at least

four hundred American vessels around the before-mentioned coasts taking mackerel. During the past two years I have seen at one time in sight, five American vessels engaged in taking codfish on the southern coast of Nova Scotia, and a great many in sailing along; and at Sable Island this Spring I have seen from fifteen to twenty in sight at one time, engaged in taking codfish."

Benjamin Wentzler, fisherman, Lower LaHave, N. S. :

1. "I have been engaged in the fisheries for twenty-seven years, up to eighteen hundred and seventy-five inclusive, and fished every year in the North Bay, around Cape Breton, Prince Edward Island, eastern side of New Brunswick, and around the Magdalens. I have taken all the fish found in the waters on the above-mentioned coast. I am also well acquainted with the inshore fisheries in Lunenburg County. I have seen often more than a hundred American vessels fishing on the above-named coasts in one fleet together, and I have seen these vessels make off from the shore when a steamer appeared to protect the fishery, and when the smoke of the steamer could not be seen they came in again to the shore. Such large numbers of them made it dangerous for Nova Scotian fishermen, and I have lost many a night's sleep by them, in order to protect our vessels. I have seen in Port Hood harbor about three hundred sail of American vessels at one time, and it is seldom, if ever, that a third of them are in any harbor at one time, and I have been run into by an American schooner in Port Hood Harbor. From 1871 to 1875 inclusive, I have seen the Americans in large numbers around Prince Edward Island, eastern side of New Brunswick, and around Cape Breton. I have seen many American vessels on the above-mentioned coast engaged in taking codfish."

Jeffrey Cook, fisherman, Lunenburg, N. S. :

2. "While in the Bay of Chaleur, the Summer before last, I saw many American vessels there engaged in fishing, and have also seen many of them there fishing since 1871. I have counted, the Summer before last, fifty American vessels within three-fourths of a mile from each other. The most of the American vessels which I saw, fished inshore around the above-mentioned coasts. I saw them take both codfish and mackerel inshore, within three miles of the shore. Mackerel are taken mostly all inshore, and I would not fit out a vessel to take mackerel unless she fished inshore."

James F. White, Merchant, P. E. Island :

"13. The mackerel, in Spring, come down the Nova Scotian shore, and then strike up the Bay to the Magdalen Islands, from there some shoals move towards the bend of this Island, and others towards Bay Chaleur, Gaspé, and round there. The Americans are well acquainted with this habit of the mackerel and follow them. They have very smart schooners and follow the fish along the shore, taking their cue, to a great extent, from what they see our boats doing."

John Champion, Fishermen, P. E. Island :—

"13. On an average there are eight hundred American vessels engaged in the cod, hake and mackerel fisheries in the Bay, that is including this Island coast, the Magdalen Islands, the New Brunswick and Nova Scotian coasts. There have been as many as fifteen hundred sail in a season, according to their own accounts. I myself have seen three hundred sail of them in a day."

Wm. Champion, Fishermen, P. E. Island :—

"Was one year in an American vessel, down eastward on this Island, and about Port Hood, Antigonish, Cape George and other places in that direction, the boats and also the American schooners fish close inshore. We fished right up in the Bay Chaleur and round the other shores of the Provinces."

James B. Hadley, Port Mulgrave, Notary Public, merchant :—

"The principal places where the Americans fish for mackerel in the summer months are all over the Gulf of St. Lawrence, off Pomquet Island, Port Hood, Prince Edward Island, in the Northumberland Straits, off Point Micou, as far up as the Magdalen River, across to the Seven Islands, off and around Magdalen Islands, and in the fall from East Point and the Magdalen Islands and Island Brion, thence to Cape St. Lawrence and Port Hood, and around the eastern shore of Cape Breton to Sydney Harbor. The trawling for codfish is done all around our shores from the first of May till the fall."

George McKenzie, Master Mariner, P. E. Island, was 40 years fishing :—

"When the mackerel strike off for this Island the American schooners never wait along the bight of this Island but press up towards the North Cape, and Miscou, and Mira, and generally along the west coast of New Brunswick and up as far as Seven Islands above Anticosti, as their experience has taught them that that is the quarter where the fish are to be found first. Later on in August and September they come back into the bight of this Island. Nearly all the fish caught during these times are caught near the shores of the British possessions, although there are some American vessels which fished entirely in deep water away from the land, but these are comparatively few."

William H. Sweet, of Fall River, in the State of Massachusetts, United States of America, but now of Port Hood, fisherman :—

"1. I have been engaged in the fishing vessels fitted out by the Americans for the past five years, and have been engaged during that time in fishing in all parts of the Gulf on the coast of Nova Scotia, Cape Breton and P. E. Island, and on the shores of the Magdalen Island.

"2. A large number of American vessels have been engaged in fishing in these waters for some years past, taking chiefly mackerel and codfish."

Jas. Archibald, fisherman, of Boston :—

"1. I have been engaged in the fishing business for 20 years past, and during seven years past I have been fishing in American vessels, in American and Canadian waters. I have been engaged in various kinds of fishing on the coasts of Nova Scotia, and Cape Breton, in the Gulf and about the Magdalen Islands, and P. E. Island. I came into this port in an American fishing vessel and have been engaged in fishing here during the present season."

This last is corroborated by Richard Thomas, fisherman, of Booth Bay, Me.

Michael Crispo, Merchant, Harbor au Bonche, N. S. :—

"The mackerel are caught all around the shores of the Gulf of St. Lawrence."

Thomas C. Roberts, Master Mariner, Cape Canso, N. S. :—

"2. During the years that I was employed in fishing, the number of American vessels fishing for mackerel and codfish in the Gulf of St. Lawrence and on the coast of Nova Scotia, would, to the best of my knowledge, range from six hundred to seven hundred each year. The average number of men to each vessel would be about fifteen."

Jacob Grosier, Fisherman, Lower LaHave, N. S.:—

"2. Four years ago I was in the Bay of Chaleur, and for many years constantly before that time year after year. Five years ago I have seen in the Bay of Chaleur from two to three hundred American vessels in one fleet. The most of these vessels took mackerel and they took the most of their mackerel inshore, and very seldom caught much mackerel beyond three miles from the shore."

Philip LeMontais, Arichat, Agent of Robin & Co.:—

"The harbor of Cheticamp is much frequented by American fishing vessels, and I have seen at one time along the shore between six hundred and eight hundred fishing vessels, most of which were American. These vessels were fishing for mackerel along the shore of Cape Breton."

John Ingraham, Yarmouth, N. S.:—

"2. About six hundred American vessels, from all ports, are engaged in fishing in Canadian waters, the average number of men is about fourteen; this is within my knowledge the past fifteen years. They fish for mackerel, codfish and halibut, from Bay de Chaleur, to Cape Forehu."

Page 110.—John Morien, of Port Medway, N. S., proves fishing for mackerel by American vessels at Cape Canso, within half-a-mile of the shore.

Page 111.—John Smeltzer, of Lunenburg, testifies that he has seen American vessels fishing for mackerel in the back harbor of Lunenburg.

Page 115.—John Bagnall, of Gabarus, Cape Breton, proves American fishing vessels in Gabarus Bay, North-east side of Cape Breton.

Page 118.—Ryan Murphy, of Port Hood, Cape Breton, swears that he has known as many as 700 American vessels fishing in the Gulf and the shores around Nova Scotia, Cape Breton, and the Magdalen Islands.

Page 126.—H. Robertson, of Griffin's Cove, Gaspe, proves an extensive mackerel fishery by Americans at Griffin's Cove, and neighboring coves.

Page 126.—Donald West, of Grand Greve, Gaspe, swears to over 100 American schooners in Gaspe Bay, yearly, for mackerel fishing.

Page 127.—Michael McInnis, of Port Daniel, Bonaventure County, Quebec, testifies that the mackerel fishery by Americans has been carried on, on an extensive scale, on that shore.

Pages 134 and 136.—John Legresly and John Legros, of Point St. Peter, Gaspe, prove a large number of American mackerelers in Gaspe Bay during and since the Reciprocity Treaty.

Daniel Orange and Joshua Mourant, of Paspébiac, Gaspe, swear that they have annually seen a large fleet of American mackerelers in Bay of Chaleur.

Page 138 to 190.—Forty nine others, all of Gaspe, swear to the continual use by the United States fishermen of the fishing grounds inshore of that region, and to the annual presence of a large fleet of American fishing vessels in the Bay of Chaleur and Gaspe Bay.

The following persons also testify that the Americans fish on all the shores of Nova Scotia, eastern and northern shores of Cape Breton, Antigonish Bay, east coast of New Brunswick, and Bay Chaleur:—

Page of Affidavits.

156.	W. Wyse, Chatham, New Brunswick.
181.	Gabriel Seaboyer, Lunenburg, Nova Scotia.
182.	Patrick Mullins, Sydney, C. B., "
190.	John Carter, Port Mouton, "
192.	Thomas Condon, Guysboro', "
200.	Matthew Monroe, Guysboro', "
200.	Isaac W. Rennells, Cape Breton, "
206.	Joshua Smith, " "
207.	Martin Wentzel, Lunenburg. "
209.	Alexander McDonald, Cape Breton, "
216.	Amos H. Outhouse, Digby, "
226.	Robert S. Eakins, Yarmouth. "
227.	John A. McLeod, Kensington, Prince Edward Island
230.	Angus B. McDonald, Souris, "
235.	John McIntyre, Fairfield, "
237.	Thomas Walsh, Souris. "
239.	Daniel McIntyre. "
247.	John Merchant, Northumberland, New Brunswick

From end to end, the British evidence shows that the United States fishermen carry on their operations within the British territorial waters. I beg here to introduce a few instances from the evidence of the United States witnesses who were produced to prove that the mackerel fishery was carried on in what is called by the United States counsel "the open sea."

TIMOTHY A. DANIELS, of Wellfleet, Mass., fisherman, called on behalf of the Government of the United States, sworn and examined.

By MR. FOSTER:—

Q. How old are you? A. 70 years.

Q. Were you engaged in mackerel fishing during a good many years? A. Yes.

Q. How many years did you come to the Gulf to fish mackerel? A. 17 years.

Q. What year did you begin and what year end? A. From 1846 to 1873 I believe, inclusive; one year out.

- Q. Were you in the same schooner all the time? A. Yes.
 Q. What was the name of the vessel? A. *Phoenix*.
 Q. What tonnage? A. 82 tons.
 Q. New or old measurement? A. Old measurement.
 Q. Were you captain all these years? A. Yes.

Q. Where did you do your principal fishing, in those places, more than three miles from shore or less? A. More than three miles.

Q. If you were a young man and fisherman once more, and wanted to come to the Gulf to catch mackerel, would you be prevented from doing it by the fact that you were forbidden to fish within three miles of the shore? A. I think so.

By Mr. WEATHERS:

Q. If you were forbidden to come within three miles of the shore, would you come at all? A. It would be under certain circumstances. If there were no fish with us and plenty there, perhaps I might. I cannot say as to that.

Q. From your experience, if you had been restricted, during all the years you came to the bay, from coming to within three miles of the shore, you would not have come? A. I think not.

STEPHEN J. MARTIN, master mariner and fisherman, of Gloucester, was called on behalf of the Government of United States. Here are some extracts from pages 212 and 215 of the American evidence.

By Mr. DANA:—

Q. But you did not fish within the three mile limit? A. No.

Q. Can you not find out from reports of vessels and from your own observation where the fish are? A. Yes.

Q. You keep your ears and eyes open all the time you are fishing? A. Yes.

Q. It is not necessary, actually, to go in and try if you find vessels leaving a place without catching anything, to discover that this is the case? A. No.

Q. And you have to judge as to the presence of fish, a good deal from the reports of others? A. Yes. A great many men have a choice as to fishing grounds; this is the case everywhere, whether in cod, halibut or mackerel fishing. Some fish one way and some another.

Q. From your experience in the Bay—a pretty long one—do you attach much importance to the right of fishing within three miles of the shore? A. Well, no, I do not think it is of any importance. It never was so to me.

By Mr. WEATHERS:—

Q. You never fished so close to the shore as that? A. Sometimes we did. We fished within five miles of Bird

Rocks.

Q. And within four miles of them? A. Well, yes.

Q. But you did not generally run in so close? A. We might have done so. I could not tell exactly how far off we fished. We used to catch our fish on different days in different places.

Q. You were asked whether you would not have your ears open and your understanding to know where other people caught their fish, and your answer was that some people had their choice? A. Yes, sir.

Q. That is to say that some people have their choice to fish in certain places and others in different places? A. Yes.

Q. And that is the only answer you gave. I suppose that you did hear where others were fishing. Have you given a full answer? A. I have given a full answer.

Q. You must have heard where others have fished? A. Of course if a man gets a full trip on Orphan Bank he will go there again.

Q. He does not care where others have fished? A. No.

Q. Then it is possible that some fish altogether in one place, and some altogether in another place? A. Well, I don't know anything about that—I only know my own experience.

Q. Then you can give no idea where fish are caught except your own actual experience? A. Well, I know where people have said.

Q. That is just what Mr. Dana asked you. I want to take the same ground that he did that your ears were open and you understood. Your answer was simply that some had their choice? A. If I spoke a vessel and he said there was a good prospect at Bradley I should go there. If he said there was good fishing on the Magdalen I should go there.

Q. I thought your answer was that some would have their choice, that no matter what they heard they would at it go to the same places? A. I would go where I got good catches the year before.

Q. Then you didn't hear of others fishing in other places? A. I have heard of them fishing at Bradley, and Magdalen and up the Gulf.

Again:—

Q. Now I don't want to trouble you with reading any opinions, but about what time was it ascertained that the mackerel fishing was inshore? A. I could not tell.

Q. At the time you mentioned it was not known that it was an inshore fishery at all? A. No, not to my knowledge. A. Yes.

By Mr. DANA:—

Q. I wish to ask you with reference to the last question when you ascertained that the mackerel fishery was an inshore fishery? A. I stated it was not in the year 1838.

Q. Mr. Weather's asked you when you first ascertained that the mackerel fishery was an inshore fishery, and whether this or that happened before you ascertained that it was an inshore fishery. Now have you ever learned that it was an inshore fishery in distinction from an offshore fishery? A. No.

Q. Well what do you mean when you speak of "after you understood it was an inshore fishery." Do you mean mainly or largely inshore? A. No. We would hardly ever catch any inshore in the first part of the season. Some parts of the year they did take them inshore and offshore too.

Q. Taking them all through, where did you catch them? A. Most of them are caught offshore.

By Mr. WEATHERS:

Q. I asked when it was that the difficulty first arose about the limit, and whether it was after it was considered an inshore fishery, that is '39? A. I referred to the year '38. It was an inshore fishery when they fished there. When vessels didn't fish there, you could not call it an inshore fishery.

The attempt of many witnesses to show that the fishing was all carried on outside of three miles, was amusing, to say the least.

ISAAC BERGESS, of Belfast, Maine, fisherman, called on behalf of the Government of the United States, sworn and examined:

By Mr. FOSTER:—

This witness fished in the Gulf of St. Lawrence in the years 1868, 1869, 1872 and 1874, and excepting on one day, all his fishing was outside of three miles.

By Mr. WEATHERS:

Q. You caught your mackerel four miles off? A. Yes.

Q. What proportion? A. Half of them,—I could not tell.

Q. I suppose that would be the distance you would select as being good fishing? A. Yes, sir.

- "Q. That would be the best fishing you have? A. Yes sir.
 "Q. I suppose most of the fishermen fished that distance? A. Yes they generally fished off there near four or five miles.
 "Q. It is considered about the best fishing, four or five miles? A. Yes, it is.
 "Q. I suppose in some places the fish would go in three and a half miles? A. Yes, some fish do.
 "Q. You would not mind coming in three and a half miles if you were four miles out, I suppose sometimes they would manage to get in three miles? A. No vessel that I have ever been in.
 "Q. I am not speaking of the vessels, but the fish—is there anything to stop them at four miles? A. No.
 "Q. There is no obstruction of any kind. Just as good water? A. Yes, only a little shallower.
 "Q. Just as good feed? A. Yes.
 "Q. Perhaps better feed? A. Well most generally the gales drive them off but they come back again.
 "Q. I suppose when the wind is a little offshore the best feed would be inside, close in? A. Yes.
 "Q. Closer inside than four miles. A. I should say so.
 "Q. They would then go in pretty close? A. Yes.
 "Q. You would then go in there and drift off? A. Yes.
 "Q. And the fleet would do that. We have evidence of that. The fleet would run in as close as they could get and then drift off? A. Yes that was the way they fished.
 "Q. As close as they could get in? A. Not within four miles.
 "Q. I was referring to a little closer. I wanted to come in a little closer if I could. I was throwing a little bait.
 A. Well, probably there might have been some fellows got in handier.
 "Q. Some would go in handier? A. Yes, some of the captains went in.
 "Q. Let us make a compromise and say three miles and a half. You don't object to that do you?" (No answer.)

George Friend, of Gloucester, whose evidence is to be found on page 119 of the United States, was produced and examined by Mr. Foster. He had many years experience of fishing in the Gulf of St. Lawrence—having fished there every year from 1855 to 1860, and owned several fishing schooners, two of which were seized, but afterwards released. He gave evidence, that the great body of his mackerel were caught more than three miles from the shore. He was cross-examined, and at page 123 the following record appears:—

- "By Mr. WEATHERS:—
 "Q. Between 1808 and 1876 you had five vessels fishing? A. Yes.
 "Q. And you made three mackerel trips? A. Yes.
 "Q. And you lost money by them? A. Yes.
 "Q. Where did the vessels fish—outside of the three mile limit? A. I could not tell you.
 "Q. You have no idea where they fished? A. No.
 "Q. You had three vessels fishing in the Bay—you sent them there? A. Yes.
 "Q. They come home, and you lost money by the trips? A. Yes.
 "Q. And you undertake to say that you do not know, and never made any enquiry whether the vessels fished inshore or outside? A. Yes.
 "Q. You never made any enquiry about it? No."

This witness also stated that he was not aware whether any of these vessels had fishing licenses from the Canadian Government.

- "Q. Is the privilege of using the inshore fishery of any use to you as fishermen? A. No. Personally, I say no.
 "Q. Do you know that practically yourself? A. That is my opinion.
 "Q. You never fished inshore? A. No.
 "Q. Therefore you are not able to say so from your own knowledge? A. I fished offshore for the very reason that I thought I would do better there. I had a perfect right to come inshore.
 "Q. You lost money, you say? A. Yes.
 "Q. Did you ever try inshore fishing? A. No.
 "Q. But you say the privilege of inshore is of no value? A. That is my opinion.
 "Q. For what reason? A. I gave you my reasons. It would keep the vessels out of the harbors, and they would get more mackerel.
 "Q. What else? A. Then we would not have so many drafts. They lay in the harbors too long, and go into harbors when it comes night.
 "Q. Is it not the practice for the fishermen to run in to the shore and drift off, and then run in again? A. It is not always you can drift off shore.
 "Q. Is the privilege of going inshore an advantage to you? A. If the mackerel were inshore, it would certainly be an advantage; if they were not inshore, it would not be an advantage.
 "Q. You never tried whether the inshore was not better than the offshore fishing; why did you not try it? A. Because I thought I could do better outside.
 "Q. Year after year you lost money. As a business man, why did you not try fishing inshore like other fishermen who have made money? A. I don't know where they are; they are very much scattered.
 "Q. Why did you not try? A. Because I thought I could do better offshore.
 "Q. Do you know of any vessel which fished within three miles of the shore? A. Not personally.
 "Q. Why do you say not personally? A. Because I do not know any one. I never saw them in there fishing.
 "Q. Did you hear of any vessel which fished inshore? A. I could not tell what I have heard.
 "Q. Have you heard of vessels fishing inshore? A. I could not answer that.
 "Q. Did you ever make any inquiries? A. No. I was not interested.
 "Q. You fished offshore, lost money, and never tried to fish inshore, and never made any enquiries as to whether there was good fishing there or not? A. Yes."

This is from the record of the evidence of CHARLES H. BRIER, of Belfast, Maine, called on behalf of the Government of the United States.

By Mr. DOCTRÉ:—

- "Q. Can you find out easily whether you are three miles or four miles or five miles off? A. I don't know how we can.
 "Q. Suppose you were about five or four miles, would you call it off shore or inshore? A. I would call it inshore.
 "Q. Then what leads you to say you caught about half of your trip inshore and half out? A. Because we did I suppose. We had a license to fish inshore and we did.
 "Q. You were not afraid of going in there? So long as you found fish you fished there? A. Yes.
 "Q. Well, you had no reason whatever, had you, to take a note of the quantity taken inshore or offshore—what reminds you now of the fact? A. I don't know anything to remind me, only that we fished about half the time offshore and caught about as many fish off shore as in."

Permit me to refer to one locality to show how completely our learned brethren on the other side have ignored our evidence. I select this instance because the absence of contradiction is perhaps unusually striking. Grand Manan on the west side of the Bay of Fundy, I have intimated, has received the especial attention of United States Counsel, and many witnesses were called to contradict the very strong case made out by Mr. Thomson there.

Let me call your attention to the other side of that Bay, and to the attention bestowed to that part of the Province of Nova Scotia by my learned friend, Mr. Wentherho. If you look at the map you will find St. Mary's Bay on the South Westernmost corner of Nova Scotia, on the Eastern shore of the mouth of the Bay of Fundy. From Cape Split near the Head of the Bay of Fundy follow down the Eastern shore of that Bay to Brier Island at the very extremity of Digby Neck a strip of rocky soil averaging one or two miles in width which forms the barrier between the Bay of Fundy and St. Mary's Bay, a bay six miles in width at Petite Passage. From Brier Island go to the head of St. Mary's Bay 30 miles and follow the sinuosities of the opposite coast to its mouth and proceed southwardly along the shores of the old French settlement of Clare towards Barrington—that ancient town which was founded by fishermen from Cape Cod, who settled there with their families in 1763. Here is a coastline on the Western part of Nova Scotia, 250 or 300 miles including the whole length of Digby and Annapolis Counties, with the finest zones and currents and temperature on the globe for a great fishing ground—swarming within three miles of the shore as you will find by turning to the 413th page of the British evidence with *codfish, haddock, pollock, halibut, herring and mackerel*. In 24 hours, with the *Speedwell*, Professor Baird would extend the list of edible fish very much. It is true we did not call witnesses from every part of this coast. It would have occupied too much time. We did, however, produce sufficient evidence. Take Brier and Long Islands,—about 14 miles in their entire coast line. These Islands are within about five or six hours sail of the United States, and will in a few months be almost connected by rail—after you cross St. Mary's Bay—with Halifax. The Inspector of Fisheries at Brier Island, Holland C. Payson, who was cross-examined by Mr. Dana, has carefully collected information. The people of these two islands alone catch \$200,000 worth of fish annually. It would be fair to put the catch of that entire coast at three millions and a half. Ezra Turner from Maine, whose testimony is to be found on page 235 of the American evidence, and who has fished in the British waters for 30 or 40 years, swore that Maine is bankrupt in the fisheries from end to end. This is corroborated by a number of American witnesses, and by the official records of the nation.

In the American answer, it is claimed that the poor people of our fishing villages are saved from destitution by the American fishermen. Mr. Payson and Mr. Ruggles—the latter a descendant of the celebrated General Ruggles—say their people do not pay a cent of poor tax. The almost destitute fishermen from the bleak coasts of Maine, and from New England, since the *Treaty of Washington*, during the last four years through these friendly neighboring coasts of ours, and from these two Islands alone they carry away annually from one-third to one-fourth as many fish as are caught by the inhabitants—say \$50,000 worth. They come with small vessels, which they haul up or anchor, and they establish themselves on the shore, and carry on these fisheries side by side with their Canadian brethren. This exercise of the right is gradually growing annually.

These American fishermen admit their distressed condition at home, and the great advantages they enjoy by access to our coasts. These fisheries of ours, with those on the New Brunswick shore, including the Grand Manan, are a great blessing to our neighbors. This is no fancy picture. Here is a list of the Affidavits, filed to establish the facts. Here are the facts from fourteen men, whose statements could have been fully sifted:—

The statements of Holland C. Payson and Mr. Ruggles as to the value and extent of the fisheries in the Bay of Fundy, and the southern coast of Nova Scotia, are corroborated by the affidavits of—

155.—Joseph D. Payson, Westport, Digby County.

207.—Livingston Collins, “ “

218.—Wallace Trask, Little River, “

218.—Geo. E. Mosely, Tiverton, “

220.—Gilbert Merrit, Sandy Cove, “

221.—Joseph E. Denton, Little River, “

221.—John McKay, Tiverton, “

222.—Whitfield Outhouse, Tiverton, “

222.—John W. Snow, Digby, “

223.—James Patterson Foster, Port Williams, Annapolis.

223.—Byron P. Ladd, Yarmouth, Yarmouth.

225.—Samuel M. Ryerson, “ “

240.—Thomas Milner, Parker's Cove, Annapolis.

240.—James W. Cousins, Digby Town, Digby.

More than seven weeks before the United States agent closed his case, we produced two of the most intelligent and respectable men in the district. While Mr. Dana was cross-examining them, his countrymen were on the shores of Digby fishing with their vessels. A messenger in a few hours could have detected any exaggeration in their statements. From that hour to the end of their case not one word of all that evidence has been contradicted or shaken. These New England fishermen continue, under the *Treaty of Washington*, to pursue their ancient calling, and their number is increasing on the western and southern shores of Nova Scotia and at Grand Manan, and all around the Bay of Fundy.

Mr. Dana calls this practical pursuit of the fisheries in British waters, a franchise, an incorporeal faculty. Call it what you will, is it not a great advantage to his countrymen? Is it not the salvation of the State of Maine? Is it not affording an increasing number of Americans safe and steady employment? These fisheries do not fail. I invite the careful attention of the Commission to pages 399 and 412 of the British evidence. Are these fisheries not supplying cheap and wholesome food to citizens of the United States? Is it not making hardy sailors of her stalwart sons? Mr. Dana can appreciate that. Mr. Foster says he fails to find any evidence, except as to the Bend of P. E. Island and Margaree. Can you, “pencil in hand,” measure by arithmetic the benefit of the right of fishing to the people of a whole coast, who have been trained to no other pursuit, and whose families are dependent on the return of the boats from Brier Island and the other coast of Nova Scotia?

What goes on here at one extremity of these wonderfully varied and prolific Canadian fisheries, is going on at the other extreme,—at Gaspe and the mouth of the St. Lawrence, and at all other points varied by the circumstances of place.

I wish to call your attention to an error—shall I say a geographical error—of our learned friends. The learned agent for the United States says he can figure this question up pencil in hand. He admits with all the assistance of Mr. Fabson and his figures (which are not evidence at all) he admits, one link in the chain of his argument is wanting—the Port Mulgrave returns of 1875. Does the learned agent know that the Port Mulgrave returns are entirely incomplete. Mr. Foster seems to be laboring under the delusion that every American fisherman re-enters himself as he passes through the Strait of Canso. This is not really the case. Look at the map and read the evidence and then see if it is possible to say, how many fishermen never sail in the direction of the Strait. All round the Eastern and Northern side of the Island of Cape Breton there are the finest mackerel grounds in the Gulf of St. Lawrence or the world. No United States witnesses could be produced to call this a dangerous coast. There are a number of fine harbors—the ancient port of Louisburg among the number—open all winter. This latter port is now connected by forty miles of railroad with the magnificent harbor of Sydney.

James McKay, of Port Mulgrave, Inspector of Fish, was called and examined as a witness before the Commission. He says, "No one man stationed in the Gut of Canso can get an accurate list of the vessels that go through there. To do so is a moral impossibility."

James Purcell, Revenue Officer at Port Mulgrave, says:—"The number of light dues collected would not be a fair return as showing the actual number of vessels that pass through the Gut of Canso."

B. M. Smalley, Fisherman, of Bedford, Maine, was called on behalf of the United States, and examined. I invite the Commissioners to read his evidence:—

"Q. Now don't you think the same fish go out and in? Is it your idea that certain schools keep in one place, and certain schools in another? A. Yes, it is my opinion the mackerel go out and in, and we know they do. But it is my positive idea that the best fish that go into the Bay Chaleurs go through the Strait and by Sydney."

"Q. Do you mean the Strait of Canso? A. No. The Strait of Bellisle, and come down to Sydney."

"Q. What time? A. Well, they are passing up and down there after the month of August, until they all go out."

"Q. You think these are not the same as you catch off the North of the Island? No, I don't."

"Q. Do you think your opinion is general? A. Yes, sir."

Here are a few extracts from the evidence on file:—

Archibald B. Skinner, inspector of fish at Port Hastings, Cape Breton, has been 32 years engaged in the fishing business, and has been a practical fisherman:—

"During the Reciprocity Treaty a large fleet of American fishing vessels came to this coast during the Summer season to carry on a fishing business. The number increased during the treaty, until at the termination a fleet numbering hundreds of vessels were engaged in fishing around the coast of Nova Scotia, Cape Breton, P. E. Island and the Magdalen Islands. These principally took mackerel and codfish, but they took other fish as well."

"A large portion of the American fishing fleet is now going every year up the eastern side of Cape Breton and fishing in the vicinity of Scatarie, Cape North, and the sections around there. I understand that these grounds are very rich in fish."

To reach these localities they are under no necessity whatever of passing through the Gut of Canso. They may, directly after they come from the Bay of Fundy, either pass along the coast of Nova Scotia and reach the Gulf by way of the northern part of Cape Breton, or pass north in the vicinity of Newfoundland.

George C. Lawrence, merchant, Port Hastings:—

"Not nearly all the American fishing vessels passing through the Straits of Canso are noted or reported. A great number pass through every year that have never been noted or reported at all."

"The Newfoundland herring fleet from American ports go thither along the eastern side of Cape Breton instead of passing through the Straits, and toward the latter part of the season large quantities of the most valuable mackerel are taken by Americans on the eastern shore of Cape Breton, between Cape North and Louisburg, and thereabouts."

Alex. McKay, merchant, North Sydney, C. B.:—

"None of the codfish vessels, to my knowledge, go through the Strait of Canso. They come around the southern and eastern coast of Cape Breton, and many mackerelmen do the same. Mackerelmen fish around by Scatarie, and it is therefore shorter for them to come round by the southern and eastern sides of the Island of Cape Breton."

James McLeod, master mariner, Cape Breton:—

"Last Summer I fished from Cape North to Scatarie, during the cod season, and saw at that season great numbers of American fishermen there, engaged in fishing. Within the last two years I have seen many American fishermen, from Cape North to Scatarie, engaged in mackerel fishing, and have seen at one time between twenty and thirty American fishermen so engaged, within sight, and think that there would be in that vicinity, at one time, about one hundred."

William Neuting, fisherman, Main-a-Dieu, Cape Breton:—

"All the codfish and halibut fishermen come around the southern and eastern coasts of Cape Breton, and do not run through the Strait of Canso. During the past five or six years I have seen, on an average, upwards of one hundred American fishing vessels each year around in this vicinity."

Wm. Edward Gardiner, merchant, Louisburg:—

"The American vessels which come here do not pass through the Strait of Canso."

Thomas Lahey, fisherman, Main-a-Dieu, C. B.:—

"I have seen in one day from fifty to sixty of these American vessels. These American vessels come round the southern coast of Cape Breton and did not run through the Strait of Canso. During the past five or six years I have seen on an aver-

age during the fishing season over a hundred American fishing vessels in and near the waters where I fished, and I have often found it difficult to keep out of their way. Those American vessels take all kinds of fish—mackerel, codfish and halibut. On board these vessels there are from sixteen down to ten men on each."

Isaac Archibald, merchant, Cow Bay, C. B. :—

"The Americans in this Bay have often practiced throwing bait overboard, and thus enticing the mackerel off-shore."

John Peach, fisherman, Cow Bay, C. B., fished from Cape North to Scaterie, and in Cow Bay :—

"The Americans fish from three miles off-shore close up to the land for mackerel, and come in among us inshore fishermen and take the fish away from us."

James Fraser, Master Mariner, Sydney :—

"During the past ten years I have seen one hundred and sixty American vessels fish in Sydney harbor for mackerel in one day, and large fleets of American fishing vessels visit our harbor daily for the purpose of catching mackerel during the mackerel season year after year."

John Ferguson, Cow Bay, C. B. :—

"I have seen from forty to fifty American vessels pass through the "Kittle" between Scaterie and Main-a-Dieu in one day."

John Murphy, Fisherman, Lingan, C. B. :—

"During the past five or six years I have caught mackerel inshore around Lingan Harbour, and last year I have seen from ten to fifteen sail of American vessels engaged in taking mackerel."

"The American mackerelmen who fish around here come around the southern and eastern coasts of Cape Breton, and all the codfish and halibut fishermen come around the same way."

Angus Matheson, Fisherman, Sydney, C. B. :—

"I have caught them in Sydney Harbour, until the bottom of the boat touched the ground. The Americans always come inshore for the mackerel and when they did not fish them inshore they baited them off to beyond the three miles."

At a time when the imaginative faculties of the learned American Agent and Counsel had not been appealed to by their government,—at a time when it had not yet been discovered that the Americans derived their title to our fisheries from the achievements of a Massachusetts Army and Navy, our American friends had another basis to rest their claim, also not to be found in the Treaties. Until quite recently, American fishermen were under the firm impression that the mackerel was an American born fish—from the neighborhood of Newport, Rock Island, Cape Henlopen, Cape May, and other places on the American coasts, which were and are spawning grounds. Under that notion, whatever mackerel was to be found in Canadian waters, were nothing but the migrating product of the fertile American coasts. That theory was touchingly impressed upon the minds of the Joint High Commissioners during the Winter and in the early Spring, which preceded the Washington Treaty. The mackerel of the Canadian waters were represented as a species of strayed chicken or domestic duck and pigeon, which the owner had the right to follow on his neighbor's farm. At that time, they had no interest at all in depreciating our fish, for Canadian mackerel were then quoted at the highest rates on the markets of Gloucester and Boston; this was avowedly the case. They had even prepared statistics for the Centennial, in which these fish were at the highest price quoted on these markets, because it was only the prodigal son which was thus offered. These fish were considered then their property, and why should they endeavour to depreciate the value of their property? Some of the British Joint High Commissioners, under this strong assertion of right, felt a deep commiseration for the proprietor of the poultry in being restricted to certain grounds in the execution of a search warrant for the recovery of his property; and in order to repair the cruelties of the Convention of 1818, they were—like a facetious American writer—prepared to sacrifice all their wives' relatives to do something at our expense for the United States, as an atonement for that long injustice.

While these notions were prevalent, our American friends had no interest in depreciating a property which constructively was their own. In a long article on the fisheries, published in the *New York World* of the 15th April, 1871, not quite a month before the signing of the Washington Treaty, evidently written by a well-informed person, we read the following :—

"About the middle of April, or the 1st of May, the mackerel fleet makes the first trip of the season to off Newport, Rock Island, Cape Henlopen, and Cape May; and if they have good luck, may get as much as 200 barrels to each vessel. These are all, however, poor fish, only ranking as No. 2, and sometimes not even that. A little later in the season, say in June, and far northward, "No. 2" fish are caught, but it is not until the middle and latter part of August, that up in the Bay of Chaleur, off Prince Edwards Island, and off the Magdalen Islands, in Canadian waters, the finest and fattest fish, both Nos. 1 and 2, are caught. From the time they are first struck in the Bay of Chaleur, the mackerel move steadily southward, until they leave Canadian waters, and are off Maine and Massachusetts, the fishermen, both American and Canadian, following them."

As already said, this idea of a migrating mackerel prevailed until Professor Baird, of the Smithsonian Institute, Washington, and other specialists, destroyed it by asserting that the mackerel was a steady and non-migrating squatter,—that what was found on the American coasts was born there, and remained there, in a pretty limited circle of motion induced by necessity of finding food; that what was caught in Canadian waters, was also born, and had there its habitat in similar conditions of circumnavigation for food, or to escape from predaceous fish. From the moment our friends discovered that the fish which were caught in the Bay were Canadian fish, these lost with them all prestige. From that moment, Canadian markets lost all consideration and credit in the minds of many. American witnesses, heard in the case, called our mackerel trash, others invented a contemptuous word to describe its rank inferiority, and called it eel-grass mackerel, something hardly good for manure, almost unfit for quotation on the market of the United States.

We do not claim such marked superiority for Canadian mackerel as was attributed to them when supposed to be of American growth; but the evidence fairly weighed shows that, while both shores have good, indifferent and inferior mackerel at times; as a whole, the Gulf mackerel have commanded a higher price on the American market than American caught mackerel,—and in a run of years the quantity caught in the Gulf was, as well as quality, superior to American shore mackerel.

In order to see whether there is any difference between Canadian and American mackerel, I appeal to the

statement produced here by Mr. Low, unknowingly, I think, because he put his hand in the wrong pocket at the time and drew out a statement prepared for the Centennial, showing that our mackerel, which had been described as being of such inferior quality, netted 50 per cent more than the American mackerel in the market.

The valuation which this Commission is called upon to make of the respective advantages resulting from the Treaty, can hardly be based on an arithmetical appreciation of the quantity of fish caught by Americans in the three mile limit, although the evidence given on this point cannot but assist the Commissioners in forming their opinion. No tribunal of arbitration probably ever had to deal with such variable and uncertain elements; and if the Commission were left without anything to guide them towards a port of refuge, they would be left on a sea of vagueness as to amount. Fortunately they will find in the case an anchor, something of a definite character to guide them. During the Conferences of the Joint High Commission, the Representatives of the United States, offered to add to fish and fish oil, as additional compensation, the admission, free of duty, of coal, salt and lumber. The annual value of the duty on these articles in the United States, taking an average of the period from 1864 to 1875, would be:—

	Value.	Duty.
Coal.....	\$773,645	\$190,886
Salt.....	91,774	46,182
Timber and Lumber.....	7,345,394	1,083,609
		\$1,330,677

Which gives for the twelve years of the Treaty the sum of \$15,848,125. The annual value of the duties in Canada on these articles, taking an average of the same period, would be:—

	Value.	Duty.
Coal.....	\$1,196,469	\$8,491
Salt.....	92,332	248
Timber and Lumber.....	500,085	6,874
		\$15,613
American Duties.....		\$15,848,124
Canadian do.....		187,356

The balance in favor of Canada would therefore be: \$15,660,768

If the matter had been settled on that basis, it does not mean that Canada would have received \$15,660,768 as a direct compensation paid into her Treasury, but according to the theory adopted by American statesmen it would have to cost that sum to have acquired those fishing privileges.

In the estimation of the evidence adduced on both sides, I admit that there is apparently a conflict of views and facts; but when weighed in the scales of an expert, by a judge or lawyer accustomed to winnow the chaff from the grain, the discrepancies would turn out more fictitious than real. We have built up a mass of witnesses and documents unassailable, the foundations of our claim. In many instances, we have obtained, from American writers, reports and witnesses, the confirmation of that substantial part of our case which consists in the value of our fisheries, both to our people and for the American nation. The *ex parte* portion of our evidence, consisting in the affidavits, has been fully sustained by the oral evidence. Generally our witnesses have been selected among citizens, whose station in life and well-established character, gave moral authority to their statements; and we could challenge our friends on the American side to point out the deposition of one witness who had to correct his examination in chief, when cross-examined. Can we say the same thing of a large number of American witnesses, without imputing to any of them the desire of stating an untruth? They have, as a rule, shown themselves so completely blinded by their national prejudices, that they have, unwittingly to themselves, been induced to give to most of their statements a color which would have been, in an ordinary court of justice, easily construed as a determined misrepresentation of facts. As an example of the reckless manner in which some of the American witnesses have spoken of the relative value of the fishing privileges granted by the Treaty of Washington, we refer to the 21st American Affidavit, subscribed to by Frank W. Friend and Sydney Friend, of the firm of Sydney Friend & Bro., Gloucester, and sworn to before one of the most important witnesses before this Commission, David W. Low, Notary Public and Postmaster of Gloucester, who could not ignore, and perhaps wrote himself this Affidavit. In answer to the 34th Question (p. 53): "The amount of remission of duties on Canadian fish, and the free market of the United States for their mackerel and other fish, saving the expense of Cutters; and the benefits of a large trade from the American vessels; the admission to our coasts for menhaden and mackerel,—will aggregate an advantage of nearly two million dollars a year in gross amount."—I may here mention the fact that two other witnesses wrote at full length the amount "two hundred millions." (Affid. 18 and 19.)—"For this we obtain the privilege of pursuing a fishery, which, after deducting expenses, will not net to the American fishermen ten thousand dollars a year."

The United States agent and counsel, who have made a successful effort to exclude from the consideration of this Commission the commercial advantages resulting from the purchase of bait and supplies, and of transshipping cargoes on our coast, have thought proper to collect a mass of evidence to prove the commercial advantages resulting to British subjects from the Washington and Reciprocity Treaties. For instance, Messrs. R. V. Knowlton and Edward A. Horton, of Gloucester, value at \$200,000 per year the bait sold by Canadians to Americans; and at half a million dollars per year the goods sold to Americans for relitting.

The principal witnesses brought from Gloucester came here with such prejudiced minds, not to say worse, that their examination in chief seemed like an attempt to blind this Commission with one-sided statements, from which, at first sight, evolved a mystery which took us some time to penetrate. Taking their figures as they first gave them, it seemed a piece of folly for any American fisherman to have attempted, more than once or twice, to have fished in British waters, as the result of each trip constituted a net loss,—the quantity of fish taken being almost insignificant, and in quality unfit for the American market. Their statistics were arranged to create that impression. The statistics with the names of several firms who had pursued such an unprofitable business for a period of twenty-five and thirty years consecutively were furnished. We could not find in our experience of things and men, an obstinacy of that magnitude in mercantile affairs. The cross-examination of these witnesses, extracted piecemeal, presented these transactions under a different aspect, and it turned out,

after all, that the Gloucester vessel owners and fishermen had had all along more sense than the witnesses wanted us to suppose,—it turned out that the fish caught in our waters were highly remunerative in quantity, and was in quality branded in the Boston and Gloucester markets far above the American shore mackerel.

I have now done with this portion of my subject, and I have said all I have to say with reference to the evidence brought in support and in contradiction of the British Case; and I now desire to deal briefly with what has been pleaded as an offset to our claim.

When we come to deal with the privileges granted by the Americans to the subjects of Her Majesty in British North America, we find them to be of two kinds:

1st.—Right to fish on the South-Eastern coast of the United States to the 39th parallel of North Latitude.

2nd.—The admission, free of duty, of fish and fish oil, the produce of British North American fisheries into the United States market.

As to the privilege of fishing in American waters, this Commission will have very little difficulty in disposing of it. In the first instance it has been proved that the most of the fish to be found in these waters are caught 30 and 90 miles offshore, almost exclusively on Georges Bank, and the British fishermen would not derive their right of fishing there from Treaties; but from international law. In the second place no British subject has ever resorted to American waters, and the province of the Commissioners being limited to twelve years, to be computed from the 1st July, 1873, there is no possibility to suppose that they will ever resort to these waters, at least during the Treaty. There remains then but one item to be considered, as constituting a possible offset, that is the admission, free of duty, of Canadian fish and fish oil. This raises several questions of political economy, which will be better dealt with by my colleague who is to follow me, and I will limit myself to say that if the question, now under consideration, were pending between the fishermen of the two countries, individually, this would suggest views which cannot be entertained as between the two Governments.

The controverted doctrines between Free traders and Protectionists, as to who pays the duty under a protective tariff, whether it is the producer or consumer, seems to be solved by this universal feature that, in no country in the world, has the consumer ever started and supported an agitation for a protective tariff; on the contrary we find everywhere directing and nursing the movements of public opinion on this matter, none but the producers and manufacturers. This cannot be explained otherwise than that the manufacturer receives in addition to a remunerative value for his goods the amount of duty as a bonus, which constitutes an artificial value levied on the consumer. It is in most instances the consumer that pays the whole amount of the duty. In a few cases there may be a proportion borne by the producer, and there is no process of reasoning or calculation to determine that proportion. When duties are imposed on articles of food which cannot be classed among luxuries, there seems to be no possibility of a doubt that the whole duty is paid by the consumer. Salt cod or mackerel will never be called luxuries of food. A duty imposed upon such articles has had the effect of raising their cost far above the amount of duty, and had thereby the effect of increasing the profit of the producer, at the expense of the consumer. For instance, a barrel of mackerel which would have brought \$10.00 when admitted free, will bring \$14.00 under a tariff of \$2.00 per barrel; and statistics will be laid before the Commissioners to prove that fact, which I will not undertake to explain. This being so, however, would it be equitable to subject the Canadian Government to the payment of an indemnity to the United States for providing American citizens with a cheap and wholesome article of food, when it is evident that the Canadian fishermen have, as a rule, been benefitted by the existence of an American duty on the product of their fisheries. The Government of the Dominion any more that its inhabitants has not suffered in an appreciable manner from the imposition of duties on fish, and the remission of that duty has been profitable only to the consumers of the United States or to the merchant who re-exports Canadian fish to foreign countries. We may therefore conclude that in a fiscal or pecuniary point of view the remission of duty almost exclusively profits the citizens of the United States. The admission of the United States fishermen to British waters at this period is pregnant with advantages unknown under the Reciprocity Treaty. Of late numerous new lines of railway have been built in all the British Provinces bordering, or in the immediate neighborhood of the United States, especially in the Provinces of Quebec, New Brunswick, P. E. Island, and Nova Scotia. A new industry consisting in the carrying of fresh fish all over the Continent, as far as California, has sprung up of late. With the confessed exhaustion of most of the American sea-fisheries this industry must find the largest part of its supplies in British waters.

To these varied advantages must be added the political boon conferred upon the United States, of allowing them to raise and educate, in the only possible school, that class of seamen which constitutes the outer fortification of every country, and of protecting her against the advance of her enemies on the seas. Would it not be a monstrous anomaly, if, by means of an indirect compensation, under the name of offset, the Canadian Government should be taxed for creating a United States navy, from which alone Canadians might entertain apprehensions in the future? I am sure any tribunal would pause before committing such a flagrant act of injustice. Your Honors will remember, I am certain, that, although the Treaty of Washington is apparently made for a period of twelve years, it might become the starting-point of a perpetual Treaty of Peace, if not stained by the verdict of this Commission, as an iniquitous instrument. It is, on the contrary, to be hoped that future diplomats will find both in our proceedings and in the award, the elements upon which to base an everlasting adjustment, which will forever settle the question of the British North American fisheries. On presenting such a result to the three Governments interested in this matter, we would collectively and individually feel proud of having been associated with this international trial.

I cannot close these remarks without acknowledging the valuable aid I have received from Professor Hind's book, filed in this case. As a specialist, in the several branches of science, connected with this case, he elucidated several grave questions, and gave the key to a great part of the evidence. My learned friend and esteemed colleague, Mr. Weatherbe, with whom I more particularly consulted, and who was so well acquainted with every spot in Nova Scotia, directed my attention to those parts of the evidence which brought in relief the advanced post occupied by this Province in the Fisheries. To both, I here tender my most cordial thanks. The inexhaustible patience and endurance of Your Honors during these proceedings, extending over a period of five months, were only equalled by the exquisite urbanity and kindness with which we have all been treated. To my other British and American confreres before the Commission, I wish to express a feeling of fellowship which I will forever cherish. The American and British Agents and the Secretary will also be associated in my remembrance with one of the most pleasant incidents of my life,—enlivened by their sincerity of purpose, and the uniform good will they have brought to bear in the discharge of their onerous duties.